

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

. . . . .  
BARBARA E. VARNER, .  
Plaintiff, . CIVIL ACTION  
 . NO. 1:CV 01-0725  
vs. .  
 .  
COMMONWEALTH OF PENNSYLVANIA, . (JUDGE YVETTE KANE)  
NINTH JUDICIAL DISTRICT, .  
CUMBERLAND COUNTY; CUMBERLAND .  
COUNTY; S. GARETH GRAHAM, .  
Individually, and JOSEPH .  
OSENKARSKI, individually, .  
Defendants. .  
. . . . .

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Deposition of: S. GARETH GRAHAM  
  
Taken by : Plaintiff  
  
Date : January 29, 2003, 9:27 a.m.  
  
Before : Emily Clark, RMR, Reporter-Notary  
  
Place : Administrative Offices of  
Pennsylvania Courts  
5035 Ritter Road, Suite 700  
Mechanicsburg, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE  
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS  
BY: A. TAYLOR WILLIAMS, ESQUIRE  
For - Defendant Commonwealth of Pennsylvania  
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAER  
BY: JAMES K. THOMAS, II, ESQUIRE  
PAUL J. DELLASEGA, ESQUIRE  
For - Defendant Cumberland County

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APPEARANCES (continued):

MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP  
BY: DAVID J. MacMAIN, ESQUIRE  
For - Defendant S. Gareth Graham

SWEENEY & SHEEHAN, P.C.  
BY: JASON G. BATES, ESQUIRE  
For - Defendant Joseph L. Osenkarski

ALSO PRESENT:

MS. BARBARA E. VARNER

MR. JOSEPH OSENKARSKI

MS. MELANIE McDONOUGH

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I N D E X

WITNESS

S. Gareth Graham	Examination
By Ms. Wallet	4

EXHIBITS

No.	Description	Identified
1	1-page "Employee Certification" 27 March '81	121
2	1-page "Receipt Acknowledgment" 4/17/01	121

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1 STIPULATION

2 It is hereby stipulated by and between the  
3 respective parties that signing, sealing, certification and  
4 filing are waived; and that all objections except as to the  
5 form of the question are reserved until the time of trial.

6

7 S. GARETH GRAHAM, called as a witness, being duly  
8 sworn, was examined and testified, as follows:

9 BY MS. WALLET:

10 Q. What is your name, sir?

11 A. S. Gareth Graham.

12 Q. By whom are you employed?

13 A. The Court of Cumberland County, Ninth Judicial  
14 District.

15 Q. How long have you been so employed?

16 A. 27, 26, 27 years. Started in September of '77,  
17 but had a previous employment with the county from July 26th  
18 of '96.

19 Q. Sir, do you have any hearing problems?

20 A. No, I don't.

21 Q. Would there be any reason today why you could not  
22 answer my questions completely and truthfully?

23 A. No.

24 Q. Are you on any medication that would interfere  
25 with your ability to listen or to respond?

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1 A. No.

2 Q. Can we agree, please, that if you for some reason  
3 have not heard my question or did you not understand my  
4 question, that you will ask me to repeat it?

5 A. Okay.

6 Q. If you answer my question, I will assume that you  
7 have both heard it and you understood it. Is that agreeable?

8 A. That's correct.

9 Q. You have counsel here today. Has that counsel  
10 been paid for by you personally?

11 A. No.

12 Q. Has the county provided counsel to you in this  
13 litigation?

14 A. Yes.

15 Q. Are you being paid by the court system for your  
16 appearance here today?

17 A. Yes.

18 Q. You receive your full salary today?

19 A. Yes.

20 Q. Are you required to take any leave to attend  
21 these depositions?

22 A. I have not clarified that. On the reporting  
23 instrument that I report on, I put county meetings or county  
24 depositions, so I did not get prior approval or clarification  
25 to your question.

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1 Q. Have you submitted a leave slip?

2 A. No, ma'am.

3 Q. Mr. Graham, when did you first learn that any  
4 complaints had been made about you by Barbara Varner?

5 A. I don't know the exact date.

6 Q. Do you know what year?

7 A. Probably 19 -- I think she began her complaining  
8 in 1996, and she filed in 1997 with the EEOC in the early  
9 part of the year.

10 Q. Do you believe that you first learned about the  
11 complaint of Ms. Varner when you were told that an EEOC  
12 complaint had been filed?

13 A. I was called down to the Human Relations office  
14 on the 29th of April, I think it was '97, and I was  
15 questioned by David Deluce and Dan Hartnett as to sexual

16 harassment allegations made by Mrs. Varner.

17 Q. Is that your recollection of the first time that  
18 anyone told you about complaints that had been made by  
19 Ms. Varner?

20 A. My recollection occurred prior to that, because  
21 Ms. Varner was engaged in clandestine or office meetings  
22 every morning with different members of the Probation staff,  
23 and for about a year these rumors, she would meet early in  
24 the morning with different members of the Probation  
25 Department in closed-door sessions.

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1 And I was first informed because she -- Tom Boyer  
2 came to me and said, did you know she, Barb Varner, is filing  
3 a petition or complaint against you for sexual harassment.  
4 And he knew that from Fran Rose, and Fran Rose knew that from  
5 Lyle Herr, because this conversation had occurred in the  
6 Adult side of the Probation Department, and this had got past  
7 me. So the first inkling of my recollection of anything that  
8 she was doing was given to me by Tom Boyer.

9 Q. And do you recall when that was, sir?

10 A. Around December of '96.

11 Q. What did Tom Boyer tell you at that time?

12 A. I just told you that, ma'am.

13 Q. Did he tell you anything else?

14 A. No.

15 Q. What did you say to him?

16 A. And I said, well, that's her prerogative.

17 Q. Prior to being called into the HR office in April  
18 of '97, did anyone in your supervisory chain of command tell  
19 you that Ms. Varner had made complaints about you?

20 A. No. I think Joe had a call from Human Relations  
21 or David Deluce a few days before. I was out on supervision  
22 on the 29th of April, and he was, you know, trying to reach  
23 me and find out, because they were downstairs assembled to  
24 question me about the complaint. So that's --

25 Q. He, Joe Osenkarski, was trying to reach you on

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1 the 29th of April?

2 A. Right.

3 Q. And did he reach you that day?

4 A. I came into the office after doing a supervision  
5 matter in the morning, and then came in and he said, they're  
6 looking for you downstairs, you know, they're assembled and  
7 questioning people regarding that.

8 And I think prior to that they had questioned  
9 other members of the Probation Department.

10 Q. How do you know that?



11 A. Just from the office rumor mill.

12 Q. Did someone tell you that they had been  
13 questioned?

14 A. No one specific. Just that different people were  
15 being called down on her behalf to validate concerns of her  
16 sexual harassment issue.

17 Q. So you met with Mr. Deluce you think sometime  
18 after the 29th of April?

19 A. No. I think it was on that date, the 29th. I'm  
20 pretty -- you could get that from when they conducted their  
21 first investigation.

22 Q. And how long did you meet with him?

23 A. Well, the first meeting was really short. He  
24 asked me a number of simple questions, and did you sexually  
25 harass Mrs. Varner; no. And a whole periphery of questions

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1 regarding did you talk to her about things about your wife,  
2 did you -- just questions of that nature of -- and have you  
3 been sexually harassing her. And I said no. He asked me  
4 just a few small questions at the beginning.

5 And then about a week later when he was still  
6 conducting his investigation, I called down to Dan Hartnett  
7 and asked him if I could have another appearance to talk  
8 about this situation. And on the second occasion I went

9 down, I had gone back and resurrected some of my notes of  
10 contacts with Ms. Varner. I provided to David Deluce or I  
11 shared with David Deluce a list of contacts that I had with  
12 Ms. Varner.

13 She was alleging that sexual harassment, she was  
14 afraid of me, I was basically made out to be a monster. And  
15 she was in a position to -- and I said, well, if that's the  
16 case, sir, here's all the trips that she went on. And I  
17 produced a document, not to them, I wouldn't give them a copy  
18 of it, but that document said it was 24 separate trips. I  
19 identified all the trips that I was on with Ms. Varner, and I  
20 identified all the mileage that I was on with Ms. Varner, and  
21 I identified all the hours I had spent with Ms. Varner.

22 And my contention to David Deluce was the fact  
23 that if this woman is terrified of me and afraid of me and  
24 purporting and alleging that I'm sexually abusing her, she's  
25 only traveled with me all these distances, all these times

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1 and to all these events. And I wouldn't think that she would  
2 put herself in the close proximity of a vehicle with me for  
3 20 hours on one particular occasion when we drove to New  
4 Jersey, if she was being subjected to being sexually harassed  
5 and worried about me personally and physically and  
6 emotionally and whatever.

7 Q. Let's go back to the first meeting. You said it  
8 was rather short. Was there anyone else present in that  
9 meeting besides you and Mr. Deluce?

10 A. David Deluce, Dan Hartnett.

11 MR. THOMAS: I'm sorry to interrupt. Let me  
12 place an objection on the record. As you know, Deb, we do  
13 contend that Mr. Deluce was counsel for the county and that  
14 this investigation may be protected pursuant to the  
15 attorney-client privilege or attorney work product  
16 exclusions. And I don't want to limit your deposition, but I  
17 obviously anything that Mr. Deluce said we will object to and  
18 instruct this witness not to answer it. I'm prepared to  
19 permit you to continue the examination. I think you're  
20 entitled to know that an investigation occurred.

21 I would like an ongoing objection to the  
22 testimony and I would like your agreement that there will not  
23 later be a waiver, an argument that we have waived any  
24 privilege that we may have.

25 MS. WALLET: I don't intend to raise an issue of

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1 waiver. I understand your position.

2 MR. THOMAS: Okay. Thanks.

3 BY MS. WALLET:

4 Q. How long do you think that that first meeting

5 which you described as short with Mr. Deluce and  
6 Mr. Hartnett, lasted?

7 A. Most likely less than 10 minutes.

8 Q. Did you give Mr. Deluce anything at that time?

9 A. No, I did not.

10 Q. You had a second meeting which you requested; is  
11 that correct?

12 A. That's correct.

13 Q. And who was present at that meeting?

14 A. Dan Hartnett and David Deluce.

15 Q. Anyone else?

16 A. No. Myself.

17 Q. And why did you request this meeting?

18 A. To clarify some of the allegations that she had  
19 made in her complaint, that they had read on the second  
20 occasion they had expounded on the questions that they were  
21 asking me. And in response to that, I wanted to provide a  
22 defense.

23 They asked me about a personal birthday card that  
24 I had given her, and I responded and -- I'm sorry to  
25 jeopardize Mr. Thomas's objection, but I responded and said I

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1 don't remember any card, would you show me the card. And  
2 they failed to show me the card. I said I don't remember.

3 I said to them, my dad used to operate a little  
4 cut-rate store, we sold greeting cards and everything. And I  
5 said, you know, the card manufacturer could probably validate  
6 by turning the card over on the back side, the manufacturing  
7 date of the card. And I had asked Mr. Deluce and them to go  
8 and validate when the card was printed from the printing  
9 manufacturer. And Ms. Wallet, I have done that. I have gone  
10 to the printing manufacturer of that card, and I think it's  
11 Sussex, Maine, and that card was produced into publication in  
12 1991.

13 And my contention was that they, she, Ms. Varner  
14 has alleged that I gave her that card in '96, and I didn't.  
15 I did not. And that was a question they asked me and that's  
16 the reply I gave them. I did not give them the call.

17 Subsequently when I finally received this card,  
18 this birthday card, just recently in some of this discovery  
19 discussions, I then called the card manufacturer. I have the  
20 name of the lady, I have the company, I have the producer of  
21 the card, and when it was placed into production. My  
22 contention was I didn't understand, you know, that I did not  
23 give her the card in '96 as she alleged. I had given her the  
24 card in 19 -- probably '91 or '92 or '93. I didn't remember  
25 the card. And that's the truth.

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1 MR. MacMAIN: Just listen to her question and  
2 just --

3 THE WITNESS: I just want to --

4 MR. MacMAIN: Okay.

5 BY MS. WALLET:

6 Q. So you requested this meeting primarily to tell  
7 them about this greeting card, or for some other reason?

8 A. I requested the meeting to try to defend some of  
9 the allegations that Ms. Varner had produced.

10 Q. Other than the card, what did you feel needed to  
11 be clarified at that time?

12 MR. MacMAIN: I think it's been answered. He  
13 said to clarify what the allegations were.

14 MS. WALLET: And I asked him what did he wish to  
15 clarify.

16 THE WITNESS: I just wished to expound on some of  
17 the questions they had asked me originally, and then they  
18 asked me some additional questions after that.

19 BY MS. WALLET:

20 Q. Well, you went to this meeting to tell them  
21 specifically about the greeting card, correct?

22 A. No.

23 Q. What did you go to this meeting to tell them  
24 specifically?

25 A. To tell them that I had a defense to her

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1 allegations.

2 Q. And your defense involved this greeting card?

3 A. That was one of her allegations, so I just  
4 responded to her allegations.

5 Q. What other items did you feel that you needed  
6 this meeting in order to clarify?

7 A. Whatever the line of questioning they would have  
8 given me: Did I discriminate against her in the workplace;  
9 no. Things like that. I did jot some of those down, you're  
10 talking how many years ago, to try to -- I just can't recall  
11 that from exact memory each question they asked.

12 Q. Do you have notes from either one of these  
13 meetings?

14 A. No.

15 Q. You said you jotted something down before you  
16 went to see these people?

17 A. No. I basically summarized in my mind what  
18 questions they had asked, and then I responded to them.

19 Q. And you jotted that down?

20 A. My response? No, I didn't jot my response down.

21 Q. What is it, sir, that you said that you jotted  
22 them down?

23 A. The sequence of questions they were asking me,  
24 like, the three questions they had asked me, I tried to, you  
25 know, write those down to try to remember what they asked me.

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1 Q. And what happened to those notes?

2 A. I have no idea.

3 Q. You don't presently have them?

4 A. I don't have them.

5 Q. And you don't have any other notes from either  
6 one of these meetings?

7 MR. MacMAIN: You mean notes taken during the  
8 meeting? Or notes I may have asked him to write down things  
9 as part of the defense of this case?

10 BY MS. WALLET:

11 Q. Other than what you have provided to your  
12 counsel, do any notes of those meetings exist?

13 A. No.

14 Q. Did you give them anything at this second  
15 meeting?

16 A. Absolutely not.

17 Q. Do you have in your possession now the  
18 information regarding the production of this greeting card?

19 A. No.

20 Q. Did you take notes of what the manufacturer told  
21 you?

22 A. I think I have -- yeah, I think I did take a note  
23 and I wrote it on the back of the card, because I called just  
24 recently, maybe a month or two months ago.



25 MS. WALLET: And you'll provide those to me, I

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1 assume?

2 MR. MacMAIN: I may. I mean, I think there might  
3 be issues of work product and so forth, but I'll certainly  
4 consider it and if I think it's appropriate, I'll produce it.  
5 If I don't, I'll let you know that as well.

6 MS. WALLET: You can consider this my formal  
7 request that those be produced.

8 MR. MacMAIN: I'd prefer if you sent me a letter.  
9 And I'll make a list so it's not missed. If you want to send  
10 me a letter with whatever items would you like.

11 MS. WALLET: I believe it falls within the  
12 interrogatory that I think you have a duty to supplement.

13 BY MS. WALLET:

14 Q. Other than those two times that you just  
15 described, Mr. Graham, did you meet with anyone who told you  
16 that they were investigating the charges made by Ms. Varner?

17 A. I had gone to the EEOC. I had gone to the  
18 Pennsylvania Human Relations Commission to try to get  
19 included in discovery of that information once I found that  
20 those things were, they're filed there, yes. And I was  
21 denied access there.

22 Q. When did you contact the EEOC?

23 A. Numerous times.

24 Q. And who did you contact there?

25 A. Sylvia Williams. I had driven to Philadelphia

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1 and went to the Bourse Building on the, I think it's the 15th  
2 floor, and I talked to Ms. -- it was a supervisor there, I  
3 think it was, her name's Joan Gamiter. And I had asked to be  
4 included in the EEOC's investigation. And she had informed  
5 me that since you and Ms. Varner had not named me as a  
6 defendant I was not entitled to any information from the EEOC  
7 at that juncture.

8 Q. Did you at any subsequent time receive  
9 information from the EEOC?

10 A. The only information I received from the EEOC  
11 was -- and I made requests, I think I did send a letter  
12 through another counsel, I don't have the copy of that, I  
13 wouldn't know where that's at, but I was seeking out counsel  
14 to try to -- for defending this claim. And I had been to a  
15 multitude of different lawyers to assist me. So I can't  
16 recall exactly who made that request or who -- I think he  
17 directed me to send the letter myself to the EEOC under  
18 freedom of information discovery.

19 Q. And who is he?

20 A. Cowden, William Cowden, in Harrisburg.

21 Q. In any event, did you receive --

22 A. Strokoff and Cowden. Are you familiar with that  
23 firm?

24 Q. I am.

25 A. Okay. So do I have that right?

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1 MR. MacMAIN: She doesn't want to know what you  
2 discussed with any counsel.

3 MS. WALLET: Correct.

4 MR. MacMAIN: Just did you make the request, and  
5 you've answered it, so.

6 THE WITNESS: Yes. Okay.

7 BY MS. WALLET:

8 Q. Did you go to the EEOC during work time?

9 A. No, I did not.

10 Q. Did you take leave?

11 A. Yes.

12 Q. When did you do that?

13 A. I don't know. I can't recall the date.

14 Q. Do you remember what month?

15 A. No.

16 Q. Do you remember what year?

17 A. I took a witness with me down there to meet Miss  
18 Gamiter.

19 Q. And who did you take with you?

20 A. Charlie Mallios, a college roommate of mine.

21 Q. And who is Mr. Mallios, other than your

22 college -- other than your college roommate, who is he?

23 A. He's just a friend of mine and he was a college  
24 roommate of mine.

25 Q. Does he own some business?

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1 A. He owns the Deer Lodge restaurant.

2 Q. You've known him since college?

3 A. Yes.

4 Q. How often do you see him?

5 A. Weekly.

6 Q. Social friends?

7 A. Yes. Our children go to school at the same high  
8 school.

9 Q. Any other relationship with Mr. Mallios? Are you  
10 in business with him in any fashion?

11 A. No, I'm not.

12 Q. No other relationship?

13 A. None.

14 Q. Why did you take Mr. Mallios with you to the  
15 EEOC?

16 A. Probably I was intimidated by the driving into

17 Philadelphia a little bit, and I wanted somebody, like proof  
18 positive to show that they denied me access to the EEOC  
19 investigation.

20 Q. Why did you think when you went that they were  
21 going to deny you access?

22 A. I didn't know when I went. I wouldn't have  
23 driven down there if I knew they were going to deny me  
24 access. I asked to be included in their investigation.

25 Q. Well, if you took Mr. Mallios with you in order

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1 to have a witness that they would deny you information --

2 A. No, I didn't say they would deny me information,  
3 Ms. Wallet. I said I went down there to try to be  
4 interviewed firsthand so -- because they wouldn't answer my  
5 phone calls and they wouldn't include me. They just said  
6 that you're not a named defendant and you have no rights to  
7 defend this claim.

8 I don't know why you didn't, you know, sue myself  
9 and Mr. Osenkowski from the beginning and include us in that  
10 investigation. And that perplexes me as to why you wouldn't  
11 include us at that juncture in the -- and maybe I don't  
12 understand the law, but here I was being named as a  
13 defendant. I was feeling that my Constitutional rights to  
14 discovery had been limited because I couldn't even discover

15 anything that she had said about me. I couldn't see any  
16 complaints that she had made about me. And I think it's a  
17 flawed federal process, and I'm not saying that as -- as in  
18 layman terms, I don't know -- I didn't know the process, I  
19 was ignorant to the process, and I tried to intelligently  
20 deal with defending this accusation against me. That's what  
21 I was trying to do. That was my intent.

22 Q. So you took Mr. Mallios with you to be a witness  
23 to what the EEOC did or didn't do?

24 MR. MacMAIN: I think it's been asked and  
25 answered.

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1 THE WITNESS: I answered that a couple times.

2 MR. MacMAIN: He said that he tried to get the  
3 information through letters and phone calls, and when he  
4 didn't, he drove down there. So I think it's been asked and  
5 answered.

6 BY MS. WALLET:

7 Q. And you took him to help you to navigate the  
8 Philadelphia traffic, correct?

9 A. I took him to allow him to witness that they were  
10 going to deny me or I thought they would deny me access. I  
11 thought maybe they would -- I didn't know where the parking  
12 was, you know. I had been down even to another Philadelphia

13 lawyer down there and he went down with me to that  
14 Philadelphia lawyer named Alice Ballard. I had been down to  
15 her to try to get representation. I didn't know where the  
16 parking was.

17 He dropped me off on that juncture and went up to  
18 the office to have the interview, and then he did some other  
19 dealings that he had to do at Temple at the time or Temple  
20 University. And then he came back and picked me up after I  
21 was done with that. So he rode along the second time for the  
22 same reason.

23 Q. Did you take Mr. Mallios because you believed  
24 Mr. Mallios had information relative to Ms. Varner's claim?

25 A. Mr. Mallios didn't know anything about

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1 Ms. Varner's claim.

2 Q. Did he know anything about your relationship  
3 between Ms. Varner and yourself?

4 A. No, he did not.

5 Q. So Charlie Mallios doesn't know anything about  
6 this case?

7 A. That's correct.

8 Q. Only what you've told him?

9 A. That's correct.

10 Q. Would you consider Mr. Mallios to be your best

11 friend?

12 A. Yes, probably.

13 Q. How long do you think he's been your best friend?

14 A. Well, since I met him in college around 1974 or  
15 '75.

16 Q. And have you seen him weekly since then?

17 A. No, not weekly.

18 Q. You've seen him weekly only in the last several  
19 years because of your children?

20 A. Right.

21 Q. Have you seen him weekly since, let's say, 1990?

22 A. Yes.

23 Q. Does he know your wife?

24 A. Yes, he does.

25 Q. Does he know your children?

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1 A. Yes.

2 Q. Know the rest of your family?

3 A. That's my immediate family. My parents are both  
4 deceased. He did know my parents.

5 Q. Okay. You said you went to the PHRC. Did you  
6 just phone them, or did you go?

7 A. I think I sent a letter to a Louise Oakley or she  
8 sent me a letter from Louise Oakley, that she sent me a



9 response that there had been no claim filed with them.

10 Q. Do you have any of those documents?

11 A. I would have to find them. I don't know where  
12 they're at. I might have them, I might not. I had them at  
13 one point. I mean, I had the letter she sent back to me.

14 Q. Now, I asked you did you meet with anyone who  
15 indicated that they were investigating the allegations made  
16 by Ms. Varner, and you told me, of course, of the two  
17 meetings with Mr. Deluce, your efforts to obtain information  
18 from the PHRC and the EEOC --

19 A. That's correct.

20 Q. Anyone else?

21 A. I had met with Jim Thomas and Paul Dellasega on  
22 July 26th, 19 -- I think '99. I remember that because it was  
23 my mother's birthday, so.

24 Q. And did they ask you to come to meet with them,  
25 or did you request that meeting?

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1 A. I think they had asked to talk with me because  
2 they were new counsel for the county. And the meeting took  
3 place in Dave Foster's office.

4 Q. Why was that?

5 A. Truthfully? I wanted them to come to my

6 attorneys. I didn't want to go to their office to be  
7 interviewed.

8 Q. And you considered Mr. Foster to be your attorney  
9 at that time?

10 A. I'm sure, you know, that because he had contacted  
11 you, Ms. Wallet, so that's self explanatory.

12 Q. Did you consider Mr. Foster to be your attorney  
13 at that time?

14 A. No. He was providing me with some legal advice.

15 MR. MacMAIN: Her question very simply is:

16 Mr. Foster was your attorney, you had retained him.

17 THE WITNESS: I had paid him funds, right.

18 BY MS. WALLET:

19 Q. And did you retain him to represent you with  
20 regard to the complaints made by Ms. Varner?

21 A. No. He advised me his specialty was not civil  
22 litigation.

23 Q. So you had him as your attorney in other matters  
24 but you spoke to him about these matters as well?

25 A. No. I never had him retained as an attorney. He

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1 was a man that worked in the court system, I knew for maybe  
2 20 years. I respected his judgment. He knew, he advised me  
3 that he knew you, you were -- you and him were together in

4 the Dickinson Law class along with Paul Dellasega. And he  
5 advised me that he would like the chance to talk with you,  
6 you know, about these allegations.

7 MR. MacMAIN: Anything you discussed with  
8 Mr. Foster is privileged. She doesn't want to know what you  
9 discussed. Listen carefully to what she's asking you.

10 THE WITNESS: Okay.

11 MR. MacMAIN: Okay?

12 BY MS. WALLET:

13 Q. Who decided that this meeting should be in  
14 Mr. Foster's office?

15 A. I did.

16 Q. Now, at that time you were represented by  
17 Mr. Foster, not by Mr. Thomas and Mr. Dellasega?

18 MR. THOMAS: Objection to the form.

19 MR. MacMAIN: Do you understand her question?

20 THE WITNESS: At that time was I represented by  
21 Dave Foster and not Thomas and -- yes. And I wasn't  
22 represented by Thomas and them at that time.

23 BY MS. WALLET:

24 Q. Was there a time when you were represented by  
25 them?

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1 A. Yes.

2 Q. Do you remember when that was?

3 A. Well, that's a matter of I think court record. I  
4 don't know the exact dates of when they came into the case.

5 They were -- they had indicated that they were  
6 going to include me as counsel. I met with Paul at the  
7 courthouse with Christine Miller, or Christine Miller. I  
8 think that was in September. I don't know the year, I don't  
9 want to quote a year and misquote it. But that was on a  
10 Friday. They had entered an entrance of appearance for me in  
11 addition to an entry of appearance for Mr. Osenkarski.

12 And then on Monday -- I met with them, like,  
13 Friday, and then and maybe a short time later they had  
14 indicated that they were going to secure private counsel for  
15 Joe and I individually.

16 Q. Okay. Did you meet with anyone else who told you  
17 that they were investigating the complaints made by  
18 Ms. Varner?

19 MR. MacMAIN: You're not including counsel that's  
20 represented him?

21 MS. WALLET: Correct.

22 MR. MacMAIN: What she wants to know very simply  
23 was did anybody else investigate as opposed to defend  
24 allegations or an attorney that you may have retained to  
25 defend allegations, anyone else that was an investigator as

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1       opposed to an attorney?

2                       THE WITNESS:   No.

3       BY MS. WALLET:

4               Q.       Did Mr. Osenkarski at any time give you  
5       directions regarding your relationship with Ms. Varner?

6               A.       I don't understand the question.

7               Q.       Did Mr. Osenkarski at any time tell you to do  
8       something or not do something that related to Ms. Varner's  
9       allegations?

10              A.       The only correspondence I received from  
11       Mr. Osenkarski was to have Sam Miller review her work.  And I  
12       was -- since this allegation had been made I was prohibited  
13       from reviewing her social histories which she submitted for  
14       approval.  He gave me a letter to that effect.

15              Q.       Other than that, did Mr. Osenkarski tell you to  
16       do or not do anything with regard to Ms. Varner?

17                      MR. MacMAIN:  With respect to the allegations?

18                      MS. WALLET:  Correct.

19                      MR. MacMAIN:  After the allegations were made by  
20       Ms. Varner of sexual harassment, at that point were you given  
21       any instruction?

22                      THE WITNESS:  His instructions were to -- he --  
23       his interest was to separate the parties.  And that was  
24       contingent upon what should happen in any mediation or  
25       mitigation that was offered through the EEOC, they tell you

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1 to separate the parties. And he was telling me to separate  
2 myself from her activities.

3 BY MS. WALLET:

4 Q. And how did he tell you to do that? In writing,  
5 or --

6 A. Verbally.

7 Q. -- orally?

8 A. Orally.

9 Q. And what did he tell you to do that would cause  
10 you to be separated from her?

11 A. What did he tell me to do?

12 Q. Yes.

13 A. He just instructed me not to have contact with  
14 her.

15 Q. When do you believe that was? Was it before or  
16 after you met with Mr. Deluce?

17 A. Oh, it wasn't before I met with Mr. Deluce. I  
18 didn't know anything about this until I met with Mr. Deluce.

19 Q. Did you receive any written instructions that you  
20 were no longer to supervise Ms. Varner?

21 A. That letter was a written instruction not to  
22 review her cases and Sam Miller would be appointed as a  
23 reviewing officer for her activities in the office.

24 Q. Do you know whether Ms. Varner received a copy of  
25 that?

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1           A.       I think she did, and I think Mr. Miller informed  
2 her of that also.

3           Q.       And when do you believe the change from you to  
4 Mr. Miller occurred?

5           A.       That's in the memo and that could be produced. I  
6 don't know the date, but there's a memo to that effect. Joe  
7 probably would have that.

8           Q.       Is it accurate to say that you listened to two  
9 days of questions of Ms. Varner as a part of these  
10 depositions?

11          A.       That's accurate.

12          Q.       You were here during those two days?

13          A.       Yes, I was.

14          Q.       Except for any time that you might have gone to  
15 the men's room briefly, you heard everything that she said  
16 under oath?

17          A.       Yes, I did.

18          Q.       And you would agree that she was asked a number  
19 of things about her personal sexual habits?

20          A.       Yes.

21          Q.       You heard all of those?

22          A.       Sure.

23          Q.       Now, you said that you were hired by the county

24 in 1977, specifically September. Would you please run me  
25 through your --

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1 A. I was hired by the county in July 26th of 1976.

2 Q. I'm sorry.

3 A. And that I was hired as the deputy Recorder of  
4 Deeds for Cumberland County. A man had retired and there was  
5 a position that came available. And I had just graduated  
6 from college in 1975, and I took a position in 19 -- I worked  
7 a year as a carpenter, and then in 19 -- July 26, 1976, I  
8 started with the Recorder of Deeds office. And I was deputy  
9 Recorder of Deeds for the County of Cumberland under Al  
10 Kugler.

11 Q. Was that a political position?

12 A. It was a row office position. Do you consider  
13 that political?

14 Q. I'm sorry, sir. I ask the questions and you  
15 answer them today.

16 A. Okay. I don't know. It's a row office position.

17 Q. Did you obtain your position as deputy Recorder  
18 of Deeds through political or Civil Service means?

19 A. I think the county commissioners -- there was  
20 a --the county commissioners were looking for someone to fill  
21 a short-term position, and I think my dad knew of that and he



22 said, do you want to try to get your foot in the door with  
23 the county so you can eventually get into a county employment  
24 position.

25 It was kind of a practice back then that Judge

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1 Shughart wanted people to be involved with the county in a  
2 position and a lot of times they would send -- if probation  
3 officers would apply and they weren't considered the first  
4 time around, they would go maybe to a prison position. They  
5 would hire that person for a prison position or another  
6 county position. So that's the gist of how I got in there.

7 Q. So your dad thought this would be a good way for  
8 you to get your foot in the door?

9 A. That's correct.

10 Q. What was your father's name?

11 A. C, period, Freemont, F-R-E-E-M-O-N-T, Graham.

12 Q. And where was his business that you described as  
13 a little cut-rate store?

14 A. The corner of South High Street and Big Spring  
15 Avenue in Newville, Pennsylvania.

16 Q. How long did he have that business?

17 A. From the time he got out of the war in the '40s  
18 up till the early -- '91 or '92.

19 Q. And did the business close at that time?

20 A. No. No, he became ill with cancer, and we  
21 continued the store about a year and a half after that.

22 Q. So the family continued the business and then it  
23 was sold?

24 A. My dad had a gentleman by the name of, a young  
25 kid name Kenny Newell, N-E-W-E-L-L, and he kind of ran the

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1 store after my dad died, for until my mother and I could sell  
2 it.

3 Q. Did your dad know Judge Shughart?

4 A. Sure.

5 Q. How did he know him?

6 A. My dad was a committee person from, for the Town  
7 of Newville.

8 Q. For what political party?

9 A. Republican.

10 Q. Is that the political party that you are  
11 affiliated with?

12 A. Yes, ma'am.

13 Q. Have you always been so affiliated with that  
14 party?

15 A. Yes.

16 Q. Have you ever been a committee person?

17 A. No.

18 Q. Have you ever had any other party office?

19 A. No.

20 Q. You're simply a registered voter?

21 A. I'm a registered voter. I was, I was on, like,  
22 the water and sewer committee of Newville. I was on the  
23 planning commission of Newville. I did my -- I secured all  
24 the right-of-ways for the sewer laterals when they put the  
25 sewer in Newville. I mean, those. I'm a member of the

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1 library board of Newville. You know, I'm affiliated with  
2 Graham Medical Center. The library board had built the  
3 center trying to get doctors into Newville years ago. So  
4 those are the affiliations I have.

5 Q. Is the Graham Medical Center in any way  
6 affiliated with your family?

7 A. It's not a direct descendent but it is affiliated  
8 with the Grahams. I am distantly related but it wouldn't be  
9 considered being related.

10 What happened, the library board --

11 MR. MacMAIN: She doesn't need to know the  
12 history. She asked you if you were affiliated. All you have  
13 to do is say yes. Okay?

14 BY MS. WALLET:

15 Q. So how did you get this job as deputy Recorder of

16 Deeds?

17 A. All Kugler called me in and interviewed me.

18 Q. And he was the recorder?

19 A. He was the recorder. He preceded Pat Vance,  
20 which you might be familiar with.

21 Q. And how long did you work as the deputy Recorder  
22 of Deeds?

23 A. July 26, '76, until September of '77. A little  
24 over a year.

25 Q. And what happened then?

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1 A. I applied to Probation and was hired in, I don't  
2 know the date in '77, but --

3 Q. Could it have been July 26th?

4 A. No. It wasn't a year later. It was over a year.  
5 It was September of '77.

6 What happened is --

7 MR. MacMAIN: Gary, you don't need to tell her  
8 the story. She just want dates.

9 BY MS. WALLET:

10 Q. Do you have any reason for why your personnel  
11 file might indicate that you were hired in September -- I'm  
12 sorry, in July?

13 A. My personnel file?

14 Q. Yes, sir.

15 A. Says -- because that's when I began county  
16 employment.

17 Q. Okay. So you think the September -- sorry --  
18 July 26, '77 date is when you started with the Recorder of  
19 Deeds?

20 A. July 26, '76, is when I started with the Recorder  
21 of Deeds office, and I worked there until September of '77.  
22 A little over a year.

23 Q. Okay. How did you obtain your job in the  
24 Probation office? How did you know there was a job there?

25 A. I guess through a secretary, you know, somebody

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1 that I would have known, a Mary Rooney or somebody like that,  
2 said that there's openings upstairs.

3 Q. Did you interview for the job?

4 A. Yes, I did.

5 Q. Who did you interview with?

6 A. Irving Groninger.

7 Q. Who was he?

8 A. He was the chief PO at the time.

9 Q. Anybody else?

10 A. Ken Bolze.

11 Q. Anybody else?

12 A. And my eventual final interview was with Judge  
13 Shughart.

14 Q. And who hired you at that time?

15 A. Judge Shughart.

16 Q. Did anyone give you letters of recommendation to  
17 obtain a job in the Probation office?

18 A. No.

19 Q. At least not at your request?

20 A. Not at my request. I don't know what you mean by  
21 that, I'm sorry.

22 Q. I suppose it's possible somebody might have  
23 recommended you that you wouldn't know about, so the question  
24 is: Did you ask for someone to give you --

25 A. No.

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1 Q. -- letters of recommendation?

2 A. No.

3 Q. And the position that you first held was  
4 probation officer trainee?

5 A. I don't know what it was called. Probation  
6 Officer-I.

7 I took a salary cut to go up upstairs. I was  
8 making more money in the Recorder of Deeds office. I think I  
9 was making 11,000, and I went up there for 9,600.

10 Q. Did you serve some sort of probationary period?

11 A. I don't think. I was just hired and I had to do  
12 the job.

13 Q. Were you a PO-I at one time?

14 A. Yes, I was.

15 Q. How long did you remain a PO-I before becoming a  
16 PO-II?

17 A. I don't know the correct date of when I became a  
18 PO-II. That could be found in the records, too.

19 Q. Do you think May 26th of '85 would be correct?

20 A. That's probably correct.

21 Q. And how did you become a PO-II, whatever the date  
22 was, in or about May of '85?

23 A. I was interviewed along with a David Meyers. And  
24 my work performance allowed me to become a, you know, a  
25 PO-II.

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1 Q. Did you compete with others for the PO-II spot?

2 A. I don't think --

3 MR. MacMAIN: Other than the person he just  
4 mentioned?

5 THE WITNESS: Other than, yeah, David Meyers. I  
6 was informed that -- I just don't recall the sequence of  
7 that.

8 BY MS. WALLET:

9 Q. And Judge Sheely appointed you to the PO-II spot?

10 A. I would have had to have been recommended by --  
11 if Mr. Groninger was still there, I would have had to have  
12 been recommended by Mr. Groninger and Mr. Bolze.

13 Q. Do you know whether Judge Sheely appointed you to  
14 the PO-II position?

15 A. I think he approved their recommendation.

16 Q. Did seniority play any role in that decision?

17 A. I'm sure a part of a role, and adequate job  
18 performance.

19 Q. Who did you report to after you became a PO-II?

20 A. Mr. Osenkarski and Ken Bolze.

21 Q. What was Mr. Osenkarski's position in or about  
22 1985?

23 A. I think he had been the supervisor, and I don't  
24 know when he was promoted to the supervisor, but he was a  
25 line person when I first went in in '77, and I think shortly

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1 thereafter he was appointed as a supervisor.

2 Q. At some point did you report directly to  
3 Mr. Osenkarski?

4 A. At the retirement of Ken Bolze, yes.

5 Q. So when you were first a PO-II your immediate



6 supervisor was Mr. Bolze?

7 A. Yes. I would say he would be my immediate  
8 supervisor, or Mr. Osenkowski.

9 We split, or we had areas of expertise, and  
10 Mr. Meyers was given the area of the adult section and I was  
11 given the area of the juvenile section. So a lot of my  
12 reporting duties would then probably have been to Joe first  
13 and then Bolze second. But Bolze was the chief, so everybody  
14 reported to him because we had a unified department at that  
15 point.

16 Q. Okay.

17 MR. THOMAS: Excuse me for a minute, Deb. We  
18 didn't clarify when we started the deposition that these were  
19 the usual stipulations? That we're preserving --

20 MR. MacMAIN: Yes, I think that was understood.  
21 But I think you're right, we should put it on the record.

22 MR. THOMAS: I think it was, too, but I just  
23 wanted to make sure. Otherwise --

24 MR. MacMAIN: All objections except as to form  
25 are reserved.

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1 MR. THOMAS: Signature?

2 MS. WALLET: I have no problem with that.

3 MR. MacMAIN: We'll also have the objection you

4 had made about the investigation report.

5 BY MS. WALLET:

6 Q. In or about 1985 who did your performance  
7 evaluations?

8 A. Ken Bolze and Joe Osenkarski.

9 Q. I guess my question --

10 A. And John Roller. I think John Roller was  
11 included. The three of them did the performance evaluations  
12 on everybody.

13 Q. Had you known Mr. Osenkarski prior to your  
14 employment in the Probation office?

15 A. Never.

16 Q. You met him only when you came into the office?

17 A. Yes, ma'am.

18 Q. How would you describe your relationship,  
19 personal and/or professional, with Mr. Osenkarski?

20 A. Excellent.

21 Q. You knew him initially because of your  
22 employment?

23 A. That's what I testified to.

24 Q. Okay. Did you eventually become social friends?

25 MR. MacMAIN: You mean socialize outside of the

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1 work functions and work seminars and so forth?

2 MS. WALLET: Correct.

3 THE WITNESS: Social friend probably began near  
4 the time of his divorce.

5 BY MS. WALLET:

6 Q. Do you remember when that was?

7 A. No.

8 Q. Why was his divorce significant?

9 A. He was, Joe was extremely distraught over his  
10 marriage breakup. And he had two 15-year-old girls, or one  
11 was 15, one was 13, or something at the time.

12 Q. And did he seek out your companionship?

13 A. Probably.

14 Q. Do you have any idea, was this mid '80s, mid  
15 '90s?

16 A. He can validate when that was. I don't know.

17 Q. When did you begin to see Mr. Osenkarski in a  
18 social fashion outside of work?

19 MR. MacMAIN: I thought he just answered that,  
20 which was after his divorce.

21 THE WITNESS: After his divorce, mostly.

22 BY MS. WALLET:

23 Q. Okay. But you're not sure when that was?

24 A. He can tell you when that was.

25 MR. MacMAIN: She's just asking if you know.

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1 THE WITNESS: Okay. I don't know.

2 BY MS. WALLET:

3 Q. Do you think it was before you became a PO-II?

4 A. Yes.

5 Q. Now, Mr. Bolze retired in August of '96. Do you  
6 believe that to be correct?

7 A. Yes.

8 Q. And Mr. Osenkowski took Mr. Bolze's job?

9 A. Not necessarily, no.

10 Q. Okay. How would you describe the change at that  
11 time?

12 A. Well, that was an interesting situation, because  
13 I had -- in June of '96 Mr. Bolze was interested in splitting  
14 the Adult staff. I think Mr. Osenkowski was the next in line  
15 as per seniority and job performance and to get the next nod  
16 to be chief of a combined department that had been in  
17 existence for 40 years. And --

18 Q. To the best of your knowledge, had seniority  
19 always been the way in which this was done?

20 A. One factor. It wasn't the only -- seniority was  
21 not the only reason to promote someone. Bob Houser had more  
22 seniority over John Roller, and John Roller was appointed to  
23 the first PO-II position. So seniority did not always play a  
24 part, if you're making that contention.

25 Q. Do you know anyone else who was promoted not

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1 based on seniority?

2 A. Well, Lyle Herr.

3 MR. MacMAIN: Hold on a second. I'm just going  
4 to object to the form, because I think what he said was  
5 seniority was a part of it, it wasn't the only. I think the  
6 way your question was phrased implied that seniority was the  
7 only --

8 THE WITNESS: She's asking me additional people,  
9 too.

10 MR. MacMAIN: Right.

11 THE WITNESS: And additional people was Lyle  
12 Herr, because Mr. McKenrick, Charles McKenrick had more  
13 seniority than Lyle Herr and he was promoted into the Adult  
14 supervisor position.

15 BY MS. WALLET:

16 Q. Okay. Anyone else that you can think of?

17 A. No.

18 Q. And that would include anyone promoted up till  
19 today?

20 A. That's correct.

21 Q. Seniority was generally used for promotions?

22 MR. MacMAIN: I'm going to object.

23 THE WITNESS: No. It was one factor, I said. It  
24 was one consideration in knowing how long you had worked for  
25 the county and did you have adequate work performance.

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1 BY MS. WALLET:

2 Q. Okay. Now, you were telling me about what  
3 happened after Mr. Bolze left.

4 A. Okay, yeah. What's your question?

5 Q. Well, my question is did Mr. Osenkarski take  
6 Mr. Bolze's job, and I believe you said, well, that's an  
7 interesting question and you were about to tell me why you  
8 thought that that was interesting.

9 A. Okay. When Mr. Bolze was considering a  
10 retirement, he considered it about a year before he, this  
11 August '96 date that you're talking about. He and John  
12 Roller and Dave Meyers had had private conversations with  
13 Judge Sheely about the splitting of these departments. And  
14 my contention or my interpretation was we were being left out  
15 of the loop in the juvenile end of Probation.

16 Q. Who was we?

17 A. Joe, me, the guys primarily doing the juvenile  
18 work, Hank Thielemann, Sam Miller, Denny Drachbar, whoever  
19 else had been there for 10 and 15 years of employment.

20 And Mr. Miller and Mr. Drachbar would -- had come  
21 to me and said, we're going to get screwed here, you know,  
22 Bolze doesn't like Joe for whatever reason and we're not  
23 being represented, can't you advocate for us.

24                   So I wrote a memorandum to Judge Sheely in June  
25   of '96 about the split of these departments and asked him to

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1   be very careful if he had determined if a split was actually  
2   going to happen.

3           Q.       And what happened as a result of your memorandum?

4           A.       As a result of that, Judge Sheely allowed the  
5   Juvenile men -- I said, call the men upstairs and talk to  
6   them about their concerns. And he did. He called Sam Miller  
7   up, he called Hank up, he called me up. And he had listened  
8   to the other side, because up until that point Ken Bolze left  
9   Joe, left me and left the entire Juvenile department out of  
10   the discussions of splitting these departments.

11                   And then after that, this -- and then when Judge  
12   Sheely had determined that was what he wanted to happen, then  
13   there was this aligning of the staff of who was going to go  
14   to what side. And we did interviews in the office of who  
15   would be available and the different positions that would be  
16   available. And we called John Roller, David Meyers, Joe and  
17   I called everyone into the office and asked them what side of  
18   the office they would like to choose, if they had a choice.

19           Q.       Why did you do that?

20                   MR. MacMAIN: I think he said he and other  
21   people.

22 BY MS. WALLET:

23 Q. Well, why did you participate in that?

24 A. Because I was being -- I was a PO-II, and a PO-II  
25 upon delegation was asked to do administrative work upon

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1 being delegated.

2 Q. And who delegated that to you?

3 A. John Roller and Joe Osenkarski asked us to be  
4 included, David Meyers and I.

5 Q. You said this group got together, the people who  
6 did juvenile work, Mr. Thielemann and Mr. Drachbar and  
7 Mr. Miller, I believe. Did you all decide that you were  
8 going to try to do something collectively to stop this  
9 movement?

10 A. Yes.

11 Q. And who decided that you would be the one that  
12 would write this memorandum?

13 A. They asked me to write it.

14 Q. Why do you think they asked you to write it?

15 A. Because I had the extensive experience in  
16 juvenile work. When I was first hired, you know, we had a  
17 blended case load, we did adult and juvenile work. But  
18 different people in the different positions had different  
19 percentages of cases assigned to them. Some would be 90



20 percent adult and 10 percent juvenile.

21 When I took over upon the retirement of Glenn  
22 Love -- that's who I replaced, you had asked me that earlier,  
23 you know, why, how did I find out about the position. But  
24 Glenn Love is the guy that retired in '77 and that's the  
25 position I took. He had primarily all juvenile position. So

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1 I handled that caseload and I assumed that type of blended  
2 assignment base.

3 Q. Now, do you think they picked you to write this  
4 memo because you knew Judge Sheely pretty well?

5 A. On, no. They picked me to write it about to  
6 express the concerns, and they helped me contribute to the  
7 letter. You know, I met with them and said, you know -- and  
8 I didn't want to work it straight that it was my only my  
9 concern. I wanted to allow the guys, and that's what Judge  
10 Sheely did, he allowed the guys to go upstairs and talk to  
11 him about it, because we had significant concerns.

12 Ms. Wallet, we had 650 referrals --

13 MR. MacMAIN: Listen to her question. She asked  
14 if you were chosen because you knew Judge Sheely, and you  
15 answered no, and she wants --

16 THE WITNESS: I wasn't chosen because I knew  
17 Judge Sheely.

18 BY MS. WALLET:

19 Q. Did you feel comfortable in going directly to  
20 Judge Sheely with your concerns?

21 A. I didn't feel comfortable, no.

22 Q. Why not?

23 A. Well, because I put in the memorandum that Ken  
24 was focused on his retirement and hadn't addressed the  
25 concerns. So I didn't know where I stood on, you know, the

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1 pecking order of was I responsible to do this or not.

2 Q. Did you know Judge Sheely outside of the  
3 supervisory relationship that he had over you?

4 A. Did I know him? No.

5 Q. Did you ever campaign for him?

6 A. No.

7 Q. Did your family campaign for him?

8 A. My dad did.

9 Q. Anybody else in your family?

10 A. I think my mother was a committee man, too, or  
11 committee woman.

12 Q. But you didn't campaign for him?

13 A. No.

14 Q. Did you contribute to his campaign?

15 A. No.

16 Q. Do you know whether your parents did?

17 A. I don't think they did.

18 Q. Now, you said that Mr. Bolze did not like Joe.

19 You meant Joe Osenkarski?

20 A. Yes.

21 Q. Why did you say that Mr. Bolze did not like Joe  
22 Osenkarski?

23 A. Ken was a very officious, offensive in-your-face  
24 type of person, similar I guess to what Ms. Varner has  
25 described me. And Joe is completely different than that.

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1 Q. Joe likes to avoid controversy?

2 MR. MacMAIN: Objection.

3 THE WITNESS: No, Joe doesn't avoid controversy.  
4 He has a blended style where he's not confrontational or  
5 argumentative.

6 BY MS. WALLET:

7 Q. So if I were to ask what Mr. Bolze's reputation  
8 was within the cadre of probation officers --

9 A. I hope you do.

10 Q. -- the general consensus would be that he was  
11 vicious and offensive?

12 MR. MacMAIN: Objection. That's not what he  
13 said.

14 MS. WALLET: I'm asking him.

15 MR. MacMAIN: I think you're trying to categorize  
16 something and repackage it.

17 MS. WALLET: I'm asking him.

18 BY MS. WALLET:

19 Q. What do you think Mr. Bolze's general reputation  
20 was among the cadre of probation officers?

21 A. He was not liked.

22 Q. And why was he not liked?

23 A. Multitude of reasons. He scrutinized people's  
24 reports. He never applied to the Courts for any relief for  
25 the Probation Department. He never instituted any grants.

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1 He was focused on his individual concerns.

2 Q. Were there people within the Department who liked  
3 Mr. Bolze?

4 A. Yes.

5 Q. Who?

6 A. Probably Mike Varner. John Roller.

7 Q. What do you think the reputation of  
8 Mr. Osenkarski is among the probation officers?

9 A. I think he was well respected towards most of the  
10 Probation Department.

11 Q. Some people not like him?

12 A. Sure.

13 Q. Who?

14 A. Kerry Houser.

15 Q. Anybody else?

16 A. Nick Barrolet. Debra Green. That's all I know.

17 Q. Would you say that there were kind of two camps  
18 within the probation officers, the Osenkowski camp and the  
19 not-Osenkowski camp?

20 MR. MacMAIN: I'll object. What time frame are  
21 you talking about?

22 BY MS. WALLET:

23 Q. Let's talk about mid '80s to the present.

24 A. Can you repeat that? I'm sorry.

25 Q. Within the Probation office do you think there

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1 was a pro-Osenkowski camp and an anti-Osenkowski camp?

2 MR. MacMAIN: What do you mean by --

3 THE WITNESS: I would rather answer it on a  
4 percentage basis. I would rather say that those people,  
5 those three or four individuals represented a small  
6 percentage of the people that disliked Joe, and the majority  
7 of the people liked Joe.

8 BY MS. WALLET:

9 Q. Okay. Anybody else in the dislike camp?

10 MR. MacMAIN: Other than the names he's already  
11 given you in the prior question?

12 MS. WALLET: Yes.

13 THE WITNESS: No.

14 BY MS. WALLET:

15 Q. Barbara Varner ever indicate to you that she  
16 didn't like Joe?

17 A. No. She indicated she liked Joe. She thought he  
18 was the best boss she ever had.

19 Q. We started out by me asking you why did you say  
20 that Bolze did not like Joe Osenkarski, and I'm not sure we  
21 ever got that answer.

22 MR. MacMAIN: Your question is why.

23 BY MS. WALLET:

24 Q. Why did you say in your earlier testimony Bolze  
25 did not like Osenkarski?

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1 A. I think Ken was jealous of Joe.

2 Q. Do you think that was justified?

3 MR. MacMAIN: Objection. Are you asking him to  
4 speculate what was in Mr. Bolze's mind?

5 MS. WALLET: No. I'm asking would there be  
6 reasons why Ken would be jealous of Mr. Osenkarski.

7 MR. MacMAIN: I'm going to object to the extent

8     you're asking him to get into Mr. Bolze's head. I don't  
9     think that's a fair question. I don't think it's something  
10    he can possibly answer.

11                   MS. WALLET: All right. I'll withdraw that  
12    question.

13    BY MS. WALLET:

14           Q.     Is there any other reason why you think Bolze  
15    didn't like Osenkarski besides being jealous?

16           A.     I think Joe had an intelligent aptitude that Ken  
17    didn't have.

18           Q.     Anything else?

19           A.     No.

20           Q.     Okay. So you were a PO-II until you were  
21    transferred, correct?

22           A.     Yes. A PO-I for a number of years, I guess,  
23    from -- you gave me a date of 1985? Right? I was promoted  
24    to PO-II? Okay. So from '77 to '85 I was a regular line  
25    staff, and then from '85 I was a PO-II.

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1                   But PO-IIs primarily did direct service work,  
2    too. We only assumed supervisory experience or any -- upon  
3    delegation. And that wasn't included as an administrative  
4    position. Ms. Varner's contention is that I trained her and

5 this and that, and that's just -- that wasn't the case.

6 Q. Okay. So you were a PO-II until approximately  
7 March of 1998; is that correct?

8 A. Yes.

9 Q. And what happened in March of 1998?

10 A. I was promoted with Dave Meyers to the  
11 supervisor, and Joe -- promoted to supervisor position.

12 But when we split the department. The county  
13 chief clerk, John Ward interrupted the split. And he had  
14 published in I think a newspaper article that -- and made a  
15 statement that he wanted these guys to be seen as  
16 supervisors. He was going to downsize the position.

17 Q. And when you say these guys, who do you mean?

18 A. Joe and John. Joe and John. He wasn't going to  
19 be in a position to promote them as chiefs, if he was going  
20 to retain them as supervisors.

21 Q. What did Mr. Ward have to do with this?

22 A. I don't know. He just -- he has a part in I  
23 guess the salary board approving the -- he's the chief clerk,  
24 he's advice to the commissioners. And he plays a part in the  
25 salary board making a decision on who gets promoted, and

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1 there was a big flap.

2 MR. MacMAIN: Gary, all she asked was what Ward's



3 role.

4 BY MS. WALLET:

5 Q. And Mr. Ward is an employee of the County of  
6 Cumberland?

7 A. He was the chief clerk.

8 Q. Is that a yes?

9 A. Yes.

10 Q. Is he still the chief clerk?

11 A. No.

12 Q. Who is the chief clerk now?

13 A. John Connelly.

14 Q. Do you know when Mr. Ward left and Mr. Connelly  
15 took over?

16 A. I think recently this year, April of this year.

17 Q. 2002?

18 A. Yes.

19 Q. We're now in 2003, but you mean 2002?

20 A. 2003, I'm sorry.

21 Q. 2000 --

22 A. No. He left -- I'm sorry. 2002.

23 Q. So you were telling me what happened after the  
24 split. When did the split occur?

25 A. Whenever we received the promotions and Judge

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1 Sheely put a letter to that effect out to the commissioners  
2 on how he was going to realign the two staffs.

3 Q. Did you have to compete for a promotion at that  
4 time?

5 A. Are you asking was it advertised or was it --

6 Q. Whatever you know about how you got the job.

7 A. I think Ken went upstairs and highlighted the  
8 expletives to our employment and our performance. And when  
9 Judge Sheely made this memorandum, he said Gary Graham  
10 graduated from York College in 1975, he holds a bachelor of  
11 science degree in this, he has been a PO-II in good standing  
12 for so many years. And he was -- and Judge Sheely and Ken  
13 and Joe and John basically made the decision.

14 MR. MacMAIN: Can I just ask one question? You  
15 used the term expletives, expletives meaning curse words?  
16 Did you mean experiences?

17 THE WITNESS: Experiences, I'm sorry.

18 MR. MacMAIN: I thought that's what you meant.

19 BY MS. WALLET:

20 Q. Okay. So after this split, what position did you  
21 have?

22 A. After the split I was the Juvenile supervisor.

23 Q. And how many individuals did you supervise?

24 A. There was a total staff complement of 12 POs.

25 Q. My question was: How many did you supervise?

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1 Did you supervise all 12?

2 A. Yes, ma'am.

3 Q. And in your supervisory role, what duties did you  
4 have?

5 A. To review the daily time sheets that were  
6 submitted.

7 Q. That's what was used to pay overtime, for  
8 example?

9 A. Yes. That was, um-hum.

10 Q. Okay.

11 A. I also did case review, close-out review. I  
12 helped prepare the new budget that we had no experience on.

13 I had been a previous member of the Woodside  
14 Detention Center, the detention facility that we used in  
15 Harrisburg, and then became Woodside, and it was -- I was on  
16 there for 11 years. And I was there during the construction  
17 of the Schaffner Youth Center, which it is today. And I was  
18 the Court board representative. They had a you, know

19 advisory, board it was called.

20 Q. And who you appointed you to that?

21 A. Judge Sheely. And I filled Joe's position. Joe  
22 had been on it for a number of years. Its inception,  
23 Woodside was somewhere around 1977, when they built Woodside.  
24 Joe was on it shortly thereafter. And then when he assumed,  
25 when he assumed, when I think I became a PO-II somewhere

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1 around '85, that would make about 11 years I was on it, till  
2 '96. So then I took that position.

3 Q. Okay. So you were listing for me your  
4 supervisory duties.

5 A. Okay.

6 Q. To whom did the budget information go?

7 A. To the county commissioners, eventually. I think  
8 to the chief clerk to review.

9 Q. Do you agree that it's the county that determines  
10 the budget for the Juvenile Probation Department?

11 MR. MacMAIN: If you know.

12 THE WITNESS: No, I'm not exactly sure. I know  
13 there's state grant money given in the Adult section and the  
14 Juvenile section. There's different contributions from the  
15 state that appropriate money for the operation of the  
16 Juvenile Probation office and the Adult Probation office.  
17 And I think the budget gets submitted with those figures and  
18 then the county makes a decision as to what items are  
19 approved or disapproved.

20 BY MS. WALLET:

21 Q. As a supervisor, did you make case assignments?

22 A. Yes, I did.

23 Q. You determined which of your officers got which  
24 cases?

25 A. Yes.

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1 Q. Was that true for the entire time until you were  
2 moved to the prison?

3 A. Up until the time where Sam Miller was appointed  
4 as her supervisor, contact person or supervisory person.

5 Q. Okay. I think you assumed I was asking you about  
6 giving assignments to Ms. Varner. I was asking you, did you  
7 have responsibility as a supervisor to give case assignments  
8 to those under your supervision --

9 A. Yes, I did.

10 Q. -- up until the time you were moved to the  
11 prison?

12 A. Yes, ma'am.

13 Q. Okay. After you were moved to the prison, did  
14 you continue to have responsibility to make case assignments?

15 A. None.

16 Q. Okay. Did you do anything else as the  
17 supervisor?

18 A. Well, I met with the county personnel, met with,  
19 like the Children and Youth director. I, we had discussions  
20 on -- we had discussions on contracts at the Schaffner Youth  
21 Center. The county had contracted for so many beds and in  
22 1977 till up until this point when the Schaffner Center was

23 used we only had two beds for any delinquent children to put  
24 in.

25 MR. MacMAIN: She doesn't need to know the

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1 history. Just what were your responsibilities as the  
2 supervisor.

3 THE WITNESS: So I negotiated a -- I helped  
4 negotiate the last contract with the Schaffner Youth Center  
5 as part of my --

6 BY MS. WALLET:

7 Q. Okay. Let me be specific, sir. Did you sign  
8 leave slips for employees?

9 A. Yes. Approved vacations.

10 Q. Did you determine when vacations would be  
11 permitted for those individuals under your supervision?

12 A. Yes.

13 Q. Did you recommend or otherwise influence times  
14 when individuals went to conferences?

15 A. Did I influence them? They put a request in and  
16 then I would approve it.

17 Q. So you approved requests to go for training or go  
18 to conferences?

19 A. Correct.

20 Q. Okay. Did you do performance evaluations?

21 A. Yes, I did.

22 Q. Were you in a position to recommend disciplinary  
23 action?

24 A. Yes, I was.

25 Q. Did you do anything else like that as a

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1 supervisor?

2 MR. MacMAIN: Like what?

3 BY MS. WALLET:

4 Q. Like that list of things that I've just given  
5 you.

6 A. Anything else?

7 MR. MacMAIN: In other words, she wants to know  
8 essentially the different things you did as a supervisor.

9 THE WITNESS: Yes.

10 MR. MacMAIN: Is there anything --

11 MS. WALLET: Correct.

12 MR. MacMAIN: Is there anything additional?

13 THE WITNESS: Not that I can recall.

14 BY MS. WALLET:

15 Q. Okay. Did you have any control over assignments  
16 of weapons?

17 A. No.

18 Q. Who did that?

19 A. Mr. Osenkarski.

20 Q. Were there weapons assigned to probation  
21 officers?

22 A. I don't know. I mean, there were weapons  
23 purchased by the Probation Department. I didn't handle any  
24 of that. Mr. Osenkarski handled that.

25 Q. Okay. Did you receive a weapon as part of your

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1 duties as a probation officer?

2 A. No, I did not, and never have.

3 Q. Do you have a personal weapon, sir?

4 A. In what regard? A gun?

5 Q. Do you own a gun?

6 A. Yes.

7 Q. How many guns do you own?

8 A. Three or four. A couple rifles, a couple  
9 shotguns.

10 Q. Okay. You own anything that I would consider a  
11 handgun, that someone would consider a handgun?

12 A. Sure.

13 Q. How many of those do you have?

14 A. Four, three or four.

15 Q. Did you ever use any of them as part of your  
16 duties and responsibilities as a probation officer?



17 A. I never carried a weapon on the job whatsoever.

18 Q. Did you ever have one in your car?

19 A. No.

20 Q. There were no occasions when you had a weapon in  
21 your vehicle when you were doing probation officer work?

22 A. No. The only time I would have had a weapon in  
23 my vehicle would have been going maybe to a training that was  
24 arranged by Joe and the Carlisle Police to go out and have a  
25 qualification shoot. That's the only time a weapon would be

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1 in my car. I never had a gun in my car during supervisions.

2 Q. So if Ms. Varner says she saw a gun in your glove  
3 compartment, that's a lie?

4 A. Absolutely.

5 Q. And if someone else said they saw a weapon in  
6 your glove compartment, that's a lie as well?

7 A. Absolutely.

8 Q. Now, were you required to have weapons training  
9 as a probation officer?

10 A. It was an elective. People that wanted to have,  
11 wanted it, were able to participate in it as part of their  
12 training, if they chose.

13 Q. Did you elect to do that?

14 A. I did for a couple years.

15 Q. Are you certified in weapons of any kind?

16 A. Not at all.

17 Q. Is there a certification program that you could  
18 be eligible for?

19 A. Absolutely, yes.

20 Q. But you've chosen not to do that?

21 A. I've chosen not to do that.

22 Q. Is there any requirement that you show any  
23 proficiency in the use of a weapon in your position as a  
24 probation officer?

25 A. No.

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1 Q. Is there any requirement that you show  
2 proficiency in the use of a weapon for any of the duties  
3 related to your employment as a probation officer?

4 A. No.

5 Q. Are you licensed to carry a handgun?

6 MR. MacMAIN: Licensed unrelated to work --

7 THE WITNESS: Licensed related to work?

8 MR. MacMAIN: -- I think your question is.

9 BY MS. WALLET:

10 Q. My question is: Are you licensed to carry a  
11 handgun?

12 A. Now? No.

13 Q. At any time since 1990?

14 A. I think I had a license to carry a handgun from  
15 the Sheriff's Department.

16 Q. What kind of license was it?

17 A. Typical five-year protection permit or whatever  
18 they used to call it, I don't know.

19 Q. And when do you think you had such a permit?

20 A. I had it for five years, so I don't know when it  
21 was renewed. You could get those records from the Sheriff's  
22 Department.

23 Q. So you're not sure when you had a permit?

24 A. Probably the last five years, the previous five  
25 years, and probably the previous 10 years. I think I renewed

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1 it once.

2 Q. But you don't have it now?

3 A. No.

4 Q. And why don't you have it now?

5 A. I didn't reapply.

6 Q. And do you remember when it was that you would  
7 have come up for reapplication?

8 A. Last year sometime.

9 Q. Was there a reason why you didn't reapply?

10 A. I have no interest in carrying a handgun.  
11 Q. Why do you own three or four of them?  
12 A. I'm a hunter. I'm a -- that's why I own them.  
13 Q. You're just a gun guy?  
14 A. Well, I'm a hunter.  
15 Q. Okay.  
16 MR. MacMAIN: Are we going to go on to a  
17 different area? A short break?  
18 MS. WALLET: Yes, that's fine. Let's take a  
19 short break.  
20 (Recess taken from 10:49 until 10:59 a.m.)  
21 BY MS. WALLET:  
22 Q. Mr. Graham, when did you first meet Barbara  
23 Varner?  
24 A. 1990.  
25 Q. On what occasion did you meet her?

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1 A. Bob Holtzberger, a Cumberland County Children and  
2 Youth worker, brought her around to introduce her to the  
3 Probation staff after she was hired in Children and Youth  
4 Services.  
5 Q. And when did you first have some supervisory  
6 relationship over Ms. Varner?  
7 A. When I was promoted to supervisor.

8 Q. Did you play any role in the hiring of Ms. Varner  
9 in the Probation office?

10 A. I talked to Joe that I had worked companion cases  
11 with Mrs. Varner and I thought that she handled them well.  
12 And I conveyed that to Joe and Ken Bolze when we were looking  
13 for applicants for the -- we had a Family Preservation grant  
14 and we had three positions available.

15 Q. Did you recommend her for one of those positions?

16 A. No.

17 Q. Now, prior to her coming to the Probation staff,  
18 how much association did you have with Ms. Varner?

19 A. Extensive.

20 Q. Would you describe what would cause you to be  
21 associated with her?

22 A. In a work environment or a personal environment?

23 Q. Either. Let's start with work.

24 A. I worked companion cases with her. Am I allowed  
25 to say the names or are we going to -- is the record still

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1 sealed in that regard?

2 Q. I don't think it's necessary that we know the  
3 names.

4 A. Okay.

5 Q. When you say companion cases, what do you mean?

6 A. She had the dependency needs of the family and I  
7 happened to have either the adult criminal charges or the  
8 delinquency end of the case.

9 Q. Okay. And would that cause you to go on trips of  
10 any sort prior to her coming to the Probation office?

11 A. Prior to her coming to the Probation office? No.  
12 Well, yes, I'm sorry. I want to correct myself on it. Yes.  
13 Because she would ask my assistance to go to places that she  
14 felt threatened, and she would call me and I would make  
15 arrangements to do that with her.

16 Q. Did you work with any other individual in the  
17 Children and Youth staff with regard to companion cases?

18 A. Lots of staff, yeah.

19 Q. Okay. Female staff?

20 A. Yes.

21 Q. Any male staff in Children and Youth that you  
22 worked with?

23 A. Bob Holtzberger I worked with. Arley Phillips, I  
24 had worked with. I don't know how many men they had there.

25 Q. Now, you said that you had an association with

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1 her personally.

2 A. Yes.

3 Q. When did you first have what you would consider  
4 to be a personal relationship with her?

5 A. Around 1990.

6 Q. What happened in 1990?

7 A. Well, we had shared companion cases. We had a  
8 case where we had gone to this dependent family and I had put  
9 a -- the crib had no slat in it, so -- or the side slats in  
10 the crib, one was missing, and I figured that the child could  
11 choke. Ms. Varner testified that they were extremely I think  
12 retarded, the girl, the female side of that. And so what I  
13 did is I went home and made a slat and took it back and put  
14 it in on another occasion with her.

15 She admired that. And at that juncture we then  
16 began a personal relationship.

17 Q. Describe for me that personal relationship.

18 A. She would call my office. She would make  
19 arrangements with her schedule and my schedule to meet in the  
20 coffee room. We talked about our mutual admiration for one  
21 another.

22 The first occasion that I met with her and we  
23 became intimate was when we drove to Ft. Hunter. That would  
24 have been '90, '91, '92. She parked her car at the Zembo  
25 Shrine parking lot. She crawled in with my car, crawled into

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1 my car. We drove up to Ft. Hunter, parked along the river.  
2 We discussed our mutual admiration and feelings for one  
3 another. We spent about an hour there talking. She had  
4 introduced to me that she had been just through a divorce. I  
5 think she had stated she was living with this other man, Lee  
6 Varner, and she was confused as to, you know, why she had  
7 feelings for me.

8 Q. Now, is there any work reason for her to meet you  
9 at Ft. Hunter?

10 A. None.

11 Q. And who initiated this contact, you or Ms.  
12 Varner?

13 A. I think she did.

14 Q. And how did she do that?

15 A. Calling me, said, do you want to spend lunch  
16 together.

17 Q. Was this on your lunch hour?

18 A. No.

19 Q. So she said, do you want to spend lunch with me,  
20 but you went to Ft. Hunter not on the lunch hour?

21 A. That's correct.

22 Q. Did you spend lunch with her after she invited  
23 you to do that?

24 A. No. We went up and we talked about our  
25 admiration for one another. And she was telling me the



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1 complications that that presented, because she had been I  
2 guess with this Mr. Varner, newly with this Mr. Varner for  
3 maybe a year, year and a half, and said that she had feelings  
4 for me.

5 Q. Had you said that you had feelings for her before  
6 she said this to you?

7 A. We both mutually talked about our admiration for  
8 one another.

9 Q. When you say admiration, what do you mean?

10 A. Interest. Sexual interest.

11 Q. What did she say that led you to believe that she  
12 had a sexual interest in you?

13 A. What did she say? She said that she had feelings  
14 for me. And she thought, like on this occasion, that that  
15 was such a nice thing to do for this family, and she's never  
16 been around that type of kindness.

17 And we didn't engage one another physically at  
18 Ft. Hunter, but when we went back to her car --

19 Q. What time of day was this?

20 A. It was lunch, over the lunch hour. So it would  
21 have been 12:00, 1:30, something like that.

22 Q. Was this a workday?

23 A. I don't remember.

24 Q. Were you in your personal car?

25 A. I was, and she was.

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1 Q. And you spent how long at Ft. Hunter?

2 A. An hour and a half. An hour.

3 Q. So you were gone from work at least two hours?

4 A. Probably.

5 Q. Do you think you took leave for this time?

6 A. Sure.

7 Q. Some kind of vacation leave?

8 A. I don't remember -- I don't remember if it was

9 exactly a workday or it wasn't a workday. I told you that

10 before. I don't know. I don't remember that. But it could

11 have been a workday. We would have taken our lunch hour to

12 have this conversation, if it happened to be a workday.

13 Q. Who decided that you were going to meet at the

14 Zembo parking lot?

15 A. She did. Or she asked me where -- no. I decided

16 to park her car there. But she asked me where she could meet

17 me, and I said there's the Zembo parking lot there. And then

18 she said, well, let's drive up to Ft. Hunter.

19 Q. So initially you were going to meet at the Zembo

20 parking lot and you were going to go to lunch?

21 A. I think, yes.

22 Q. Where were you going to go to lunch?

23 A. I don't know. We were just going to find lunch

24 together.

25 Q. Okay. Now, how far is it from the Zembo parking

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1 lot to Ft. Hunter?

2 A. Four or five miles.

3 Q. Who decided to go to Ft. Hunter, you or she?

4 A. I had testified it was her decision to go to  
5 Ft. Hunter where we could get a place to talk with one  
6 another about her --

7 Q. So you went, you drove?

8 A. I drove.

9 Q. She's in the car?

10 A. She climbed in my car.

11 Q. No one else is there?

12 A. No one.

13 Q. Anyone see you at Ft. Hunter?

14 A. No.

15 Q. Did you spend the entire time in your vehicle?

16 A. Yes.

17 Q. You didn't get out and walk around?

18 A. No.

19 Q. Okay. And you said that you were intimate with  
20 her on this occasion?

21 A. She -- I was not intimate with her on that  
22 occasion until I had dropped her off at her car, and she

23       leaned over and kissed me.

24           Q.       Okay. Did you discuss having a sexual  
25       relationship at that time?

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1           A.       That was the first time she kissed me. I don't  
2       know what that meant. I mean, no, we didn't discuss, you  
3       know, where we were going with this.

4           Q.       Did you object to the kiss?

5           A.       No. I was flattered by it.

6           Q.       Okay. And was that the end of --

7           A.       That was it.

8           Q.       -- that incident?

9           A.       Um-hum.

10          Q.       Did you ever eat lunch?

11          A.       No.

12          Q.       When was the next time that you had what you  
13       considered to be a personal meeting with Ms. Varner?

14          A.       It probably started at least twice a month after  
15       that. We would get together in the coffee room at work and  
16       then we would talk about spending some time together and we  
17       would determine where that time would be, and then we would  
18       go to meet each other. And that occurred from 1990 to around  
19       '92.

20          Q.       And how often do you believe you saw Ms. Varner

21 for reasons other than work between 1990 and 1992?

22 A. Probably once or twice a month. Maybe every two  
23 weeks, as a guesstimate. I'm not exactly accurate. I would  
24 meet with her. She would call me at the Probation office  
25 from the Children and Youth Department she was in, and I

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1 would call her.

2 Q. Okay. So approximately 20 to 50 times between  
3 '90 and '92?

4 A. Yes.

5 Q. Were these during work hours or after work hours?

6 A. Both.

7 Q. Okay. Tell me how many times you think you met  
8 during work hours.

9 A. I would say the same type of estimation, maybe  
10 once or twice a month.

11 Q. And would you initiate this or would she initiate  
12 it?

13 A. It occurred both ways.

14 Q. Was it primarily during the lunch hour or regular  
15 working hours?

16 A. It was, I would say it was primarily over lunch  
17 breaks, if you want a definition of how to do that. I mean,  
18 and then she would call me regarding any cases that she had,

19 like, in the Newville area or any cases I would have in the  
20 Newville area, we might go up there, you know, supervising  
21 independently and then hook up up there somewhere in  
22 Newville, somewhere in New Cumberland.

23 After the relationship progressed -- I'll let you  
24 ask the questions, I'm sorry.

25 Q. Good idea, Mr. Graham. Between '98 and '92 you

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1 had no supervisory relationship over Ms. Varner; is that  
2 correct?

3 A. No. She was an employee at Children and Youth  
4 and I was an employee of the Probation Department.

5 Q. The only reason that you would have to meet from  
6 a work standpoint would be these companion cases that you  
7 mentioned to me?

8 A. Yes, ma'am.

9 Q. And it's your testimony that she initiated this  
10 personal relationship?

11 A. No. It was a mutual admiration of one another.

12 Q. I see. But she made the first call to say: Meet  
13 me at lunch?

14 A. No. I didn't -- I don't know who made the first  
15 call to say meet me at lunch. I said I don't know who made  
16 the first call in 1990, I'm sorry.

17 Q. Were you sexually attracted to her at that time?

18 A. Yes, I was.

19 Q. You were married at that time?

20 A. Yes, I was.

21 Q. How long had you been married?

22 A. 20 years.

23 Q. When were you married?

24 A. August 14th of '82.

25 Q. You're presently married?

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1 A. Yes.

2 Q. Still living with your wife?

3 A. Yes.

4 Q. Two children?

5 A. Two girls.

6 Q. Any other marriages?

7 A. No.

8 Q. Have you been unfaithful to your wife with anyone  
9 other than Ms. Varner?

10 A. No, ma'am.

11 Q. Have you had any sexual relationship with any  
12 other woman during your marriage?

13 A. No.

14 Q. So Ms. Varner was the only one?

15 A. Yes, ma'am.

16 Q. And you're not sure whether she initiated it or  
17 you initiated it?

18 MR. MacMAIN: It's been asked and answered  
19 several times, I believe. You want him to answer it again?

20 MS. WALLET: Sure.

21 THE WITNESS: Who initiated the initial meeting?  
22 I don't know.

23 BY MS. WALLET:

24 Q. When did you first have sex with Barbara Varner?

25 A. Valentine's Day of '92.

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1 Q. Obviously, you remember that pretty well. What  
2 happened on that day?

3 A. We met in New Cumberland. She parked her car at  
4 the Giant parking lot. I think we met for lunch at Coakley's  
5 restaurant on Bridge Street in New Cumberland. We had lunch.  
6 We went down to a remote area of Goldsboro, which is along  
7 the railroad tracks right beside the river in view of the --  
8 and we engaged in sex in my vehicle.

9 Q. Sexual intercourse?

10 A. Sexual intercourse.

11 Q. Describe for me what you did on that occasion.



12 A. What I did? I pulled my car in a remote area  
13 along the railroad tracks.

14 Q. What vehicle did you have?

15 A. A Jeep Grand Wagoneer at the time. And we began  
16 by petting one another and got into the foreplay, and we  
17 consummated the act of intercourse in my vehicle.

18 Q. In the front seat or the back seat?

19 A. In the front seat.

20 Q. Was it a bench seat or split seats?

21 A. Back then it was a, I think it was a bench seat.

22 Wait. I'm not sure. No, it was split seats.

23 Q. Were you naked?

24 A. From my waist down, I was.

25 Q. Was she naked?

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1 A. No. From her waist down, she was. She had wore  
2 a dress. And she climbed over onto me.

3 Q. She initiated the sexual encounter?

4 A. No. Both of us did.

5 Q. How long did this encounter last?

6 A. Probably less than five minutes.

7 Q. Was it during the day or after work?

8 A. During the day.

9 Q. Do you know what time of day?

10 A. Afternoon, probably after lunch, probably 1:30.

11 Q. Were you on the clock?

12 A. I can't recall. I don't think we were.

13 Q. You think you took leave?

14 A. We were allowed a lunch break and we were I think  
15 engaging in our activity -- I think I took leave, yes, ma'am.

16 Q. So you met her somewhere between 20 and 50 times  
17 in the early '90s before you actually had sex with her on  
18 Valentine's day in 1992?

19 A. I met her in '90 and the first conception of  
20 sexual intercourse was in about two years later. Prior to  
21 that on these meetings we would engage in kissing and  
22 fondling one another in my vehicle, sometimes in her vehicle.

23 Q. To the best of your knowledge, did anyone see  
24 this activity?

25 A. No.

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1 Q. To the best of your recollection, did most of  
2 these take place during the day or after work?

3 A. Basically in the, like, afternoon hours.

4 Q. So at four, five o'clock?

5 A. Yes.

6 Q. And you believe you took leave for this time?

7 A. Yes.

8 Q. So your leave for that period of time would show  
9 a number of leave slips for the afternoon hours?

10 A. Not for the afternoon hours. For lunch hours.  
11 For the lunch hours.

12 Q. You don't have to take leave for lunch, do you?

13 A. We count our time by increments of seven and a  
14 half hours a day, you know. And then we have a compensatory  
15 time that you have the opportunity to take leave at your  
16 discretion.

17 MR. MacMAIN: I think what she's asking you, did  
18 you fill out a leave slip or was there anything, was there  
19 any paperwork documenting --

20 THE WITNESS: No.

21 BY MS. WALLET:

22 Q. What were your regular hours of work in the early  
23 '90s?

24 A. 8:00 to 4:30.

25 Q. Did you have any requirement to sign in or out?

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1 A. There was a sign-in tablet, um-hum.

2 Q. And how did you submit your hours to be paid  
3 during that period of time?

4 A. Just through daily report of activity and through  
5 a -- later it became, there was a, I don't know what you call

6 the document, a time sheet. They call it a time sheet. I  
7 guess that's the proper.

8 Q. So these times that you met Ms. Varner in the  
9 afternoon, would you indicate that there were periods of time  
10 in the afternoon where you were not working?

11 A. Yes.

12 Q. And then would you make it up at the end of the  
13 day, or how did this work?

14 A. Made it up at the end of the week. You had to  
15 have your, you know, your time in by the end of the week.  
16 You were allowed back then, you know, unlimited amounts of  
17 compensatory time, because we had -- we tried to hold down  
18 the overtime. So the job required a lot of extra amounts of  
19 time when you develop these cases.

20 Q. To the best of your recollection, sir, did you  
21 charge the county for any of the time that you spent in your  
22 personal relationship with Ms. Varner?

23 A. Never.

24 Q. Did she, to the best of your knowledge?

25 A. I don't know what she did.

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1 Q. After Ft. Hunter, do you remember what your next  
2 contact was with Ms. Varner?

3 A. Well, we just had -- after Ft. Hunter, well, no,

4 I don't remember the exact next -- no, not specifically.

5 Q. You don't remember whether it was lunch, whether  
6 it was a meeting?

7 A. It was always lunch, and then it was usually  
8 taking off in the afternoons.

9 Q. When did you first have sex with Ms. Varner after  
10 work?

11 A. I'm not sure. That would have to depend on --  
12 I'm not sure. I don't know.

13 Q. Well, do you recall any time that you had sex  
14 with her after normal working hours?

15 A. The only times were when her husband was away  
16 from the home and she would call and invite me to her home.

17 Q. And how many times did she call you and invite  
18 you to her home?

19 A. Usually every time her husband went away.

20 Q. Are we talking about once a month, twice a month?

21 A. She testified yesterday he took what, four or  
22 five trips a year.

23 Q. So every time he went, she would call you and you  
24 would meet for sex?

25 A. She would call me and invite me to her home

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1 saying -- and she would give me her husband's travel

2 schedule.

3 She would also take him to the airport and drive  
4 him to the airport so he had an accountability of where his  
5 car was at and no access to come back to the home.

6 Q. And she told you this?

7 A. Yes, she did. She did this.

8 Q. Where did Mr. Varner take trips to?

9 A. He was employed at AMP at the time, and I think  
10 he went out to San Diego. He took some trips with her, but  
11 he also took the majority, I guess, of the trips on his own.  
12 That's what she was telling me.

13 Q. Where did you remember that she told you that he  
14 was on trips, what locations? San Diego?

15 A. Different. San Diego. Cincinnati, Ohio.  
16 Different places.

17 Q. Any others that you remember?

18 A. I didn't pertain -- I don't remember exactly  
19 where he went, no.

20 Q. Did you use birth control during this sexual  
21 encounter?

22 A. The very first encounter back in February 14th of  
23 that Valentine's Day, I used a condom. After that, she had  
24 purchased as I understand some vaginal gel.

25 Q. So when you went to meet her on Valentine's Day

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1 in '92 you had a condom with you?

2 A. Yes, I did.

3 Q. Did you have a condom with you because you  
4 believed you were going to have sex with her on that  
5 occasion?

6 A. Yes.

7 Q. Do you use birth control with your wife?

8 A. You mean is she on the pill?

9 Q. I'm asking you, do you use birth control when you  
10 have sex with your wife?

11 A. In what form? I mean, I don't understand.

12 Q. What part of that question don't you understand,  
13 Mr. Graham?

14 A. Do I use birth control with my wife? My wife was  
15 on birth control pills.

16 Q. Anything else?

17 MR. MacMAIN: Anything else what? Any other  
18 birth control beside pills?

19 MS. WALLET: Correct.

20 BY MS. WALLET:

21 Q. Any other birth control beside pills?

22 A. She's not currently on birth control pills. I  
23 mean, it's a multi-level question.

24 Q. Well, let me ask you this. Were you having sex  
25 with your wife at the same time as you were having sex with

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1 Ms. Varner?

2 A. Yes, I was.

3 Q. And during those occasions, same time period,  
4 were you using birth control when you had sex with your wife?

5 A. Yes.

6 Q. And it was her on the pill?

7 A. Yes.

8 Q. No others?

9 A. No others.

10 Q. So when you bought condoms, you bought them  
11 specifically to have sex with Ms. Varner?

12 A. I only used the condom one time with Ms. Varner.  
13 After that, she went and purchased some vaginal birth control  
14 preventative gel.

15 Q. Were you concerned about conceiving a child  
16 during this period?

17 A. Absolutely.

18 Q. And what steps did you take to make sure that you  
19 did not conceive a child with Ms. Varner?

20 A. I would always ejaculate outside of her.

21 Q. I'm sorry, Mr. Graham, I have to ask you these  
22 questions, but how did you do that?

23 A. I would exit her at the time I was ready to  
24 ejaculate.



25 Q. And did you believe that might be an effective

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1 birth control method?

2 A. Yes, I did.

3 Q. Sir, would you consider yourself to be sexually  
4 experienced?

5 MR. MacMAIN: Can you define what you mean by  
6 sexually experienced?

7 BY MS. WALLET:

8 Q. Did you have sex before you married your wife?

9 A. Yes, ma'am.

10 Q. With how many people did you have sex prior to  
11 your marriage?

12 A. I don't know.

13 Q. Well, five, more than five, more than 10?

14 A. Probably five.

15 Q. And when, at what date did you lose your  
16 virginity?

17 A. 11th grade. I graduated in '71, so that would  
18 have been 1970. 1970.

19 Q. And was this an older or a younger woman?

20 A. She was a year younger than me. She was my high  
21 school sweetheart.

22 Q. And did you have sex with her on more than one

23 occasion?

24 A. Yes.

25 Q. Did that continue through school?

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1 A. Yes.

2 Q. Did you have other sexual encounters while you  
3 were in high school?

4 A. No.

5 Q. Let's talk about your educational background, I  
6 think we missed that.

7 A. Okay.

8 Q. Graduated from what high school?

9 A. Big Spring High School, 1971.

10 Q. Go immediately to college?

11 A. I went to HACC for two years between '72 and '73.

12 Q. Okay.

13 A. Went to York College from '73 and graduated from  
14 in '75. Attended Shippensburg University I think back in the  
15 early '80s for human -- just for a couple classes towards my  
16 master's degree, but I never finished.

17 Q. You hold a bachelor's degree?

18 A. Yes.

19 Q. What's that degree in?

20 A. Criminal justice.

21 Q. And that's from York College?

22 A. Yes.

23 Q. Do you hold any other advanced degrees?

24 A. No.

25 Q. You do not hold a master's; you took some classes

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1 toward it?

2 A. I took two summer classes, one in statistics and  
3 one in theories of personality. And I had no -- and I just

4 didn't develop an interest. I think I got married right  
5 after that, that was in '81, and I started building a house.  
6 And I lost interest in it.

7 Q. Now, these four, five people or more that you had  
8 sex with before you got married, were they in primarily  
9 college?

10 A. Yes.

11 Q. Other than your high school sweetheart?

12 A. Well, I kept my high school sweetheart through  
13 three years of college, too, so. You're asking me, so. I  
14 don't know.

15 Q. Were you shocked when Ms. Varner suggested to you  
16 that you have a sexual relationship?

17 MR. THOMAS: Objection to the form.

18 THE WITNESS: Was I shocked? She had described  
19 our relationship as a mature adult relationship.

20 BY MS. WALLET:

21 Q. In what context did that come up?

22 A. In the context of the infidelity that we were  
23 committing.

24 Q. Was she married at the time?

25 A. She wasn't married to Lee Varner at the time.

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1 She was living with him at a Weatherburn address in New  
2 Cumberland, a townhouse.

3 Q. Okay. So she had already initiated the  
4 relationship with Mr. Varner at the time that you began to  
5 have sex with her?

6 A. She had been -- from what she had told me, she  
7 had been through a divorce, met Mr. Varner at HACC while she  
8 was going to school there. Yesterday was the first time I  
9 ever heard this her during her testimony, that she resided  
10 with Mr. Varner in Harrisburg on this Sussex Street or  
11 whatever she said. I wasn't aware of that. And -- but I was  
12 aware that he lived with her in her townhouse apartment. And  
13 I think she, what she told me is she bought that house, that  
14 townhouse, with the money she got from her divorce  
15 settlement. And he was living with her at the time at that

16 Weatherburn address.

17 Q. Did you ever brag to people at work that you  
18 wanted to do sexual things to Barbara Varner?

19 A. In what respect?

20 Q. Well, what part of that don't you understand?  
21 Did you ever tell somebody at work you wanted to do something  
22 sexual with Barbara Varner?

23 A. Yes.

24 Q. Who did you tell?

25 A. Probably Mark Galbraith.

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1 Q. Did you tell Mr. Osenkowski that you were  
2 interested in having sex with her?

3 A. No.

4 Q. Did you tell Mr. Osenkowski that you were,  
5 indeed, having sex with her?

6 A. Never.

7 Q. Did you tell anybody at work that you were having  
8 sex with Ms. Varner?

9 A. No.

10 Q. I'm assuming now until you made this revelation  
11 in July of '97 to Judge Sheely, correct?

12 MR. THOMAS: Objection to the form.

13 MS. WALLET: Sorry?

14 MR. THOMAS: Objection to the form. He can  
15 answer.

16 THE WITNESS: Not -- I didn't tell anyone about  
17 our relationship.

18 BY MS. WALLET:

19 Q. Let me withdraw that. Let's make it clear.

20 A. Okay.

21 Q. Who was the first person at work that you told  
22 that you were having a sexual relationship with Ms. Varner?

23 A. Judge Sheely.

24 Q. And you did that on the 9th or 10th of July of  
25 1997?

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1 A. Yes.

2 Q. Now, did you ever tell Mr. Deluce or anyone else  
3 who was investigating the allegations that Ms. Varner had  
4 made against you, that you had a sexual relationship with her  
5 prior to your telling Judge Sheely?

6 A. That question didn't come up.

7 Q. So because nobody said, are you having sex with  
8 Barbara Varner, you didn't think that it was important to  
9 tell them?

10 MR. MacMAIN: Objection to the form.

11 BY MS. WALLET:

12 Q. You have to answer the question, sir.

13 A. Repeat it again? I'm sorry.

14 MR. MacMAIN: Her question was, I think it's  
15 already been asked and answered, is: Did you tell anybody at  
16 work that you were having sex with Barbara Varner before you  
17 told Judge Sheely?

18 MS. WALLET: No, that wasn't my question.

19 BY MS. WALLET:

20 Q. My question was -- your answer was you didn't  
21 tell anyone because it didn't come up.

22 A. No.

23 Q. My question was: Did you expect someone to ask  
24 you: Are you having sex with Barbara Varner?

25 A. You asked me about David Deluce. You didn't ask

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1 me about anyone else at work. Your general -- I mean, that's  
2 a generalized statement you made. You asked me about David  
3 Deluce, Ms. Wallet.

4 Q. My question --

5 A. I said David Deluce did not bring that subject up  
6 when he interviewed me.

7 Q. And you didn't bring it up, either?

8 A. Absolutely.

9 Q. Because you didn't think it was important at that

10 time?

11 A. Not because I didn't see it was important, I  
12 saw --

13 MR. THOMAS: Objection.

14 THE WITNESS: I saw that they had called down a  
15 series of people that didn't like me and started this  
16 interviewing process. And I could see that I had no friend  
17 in the room when he started his interview of me in regard to  
18 this situation.

19 And then when I provided him with a list of all  
20 the trips and things and somewhat of a defense to some of the  
21 questions he asked, he went back to her, David Deluce went  
22 back to her and then I saw that the county was sharing the  
23 information I confidentially gave them and then preparing a  
24 defense against me.

25 So I didn't share anything with him. Wouldn't

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1 give him a copy of anything. I wouldn't give Mr. Thomas or  
2 anybody a copy of anything, you know, even when this matter  
3 came up. I wasn't going to share my personal life with those  
4 people that were out head-hunting for my head.

5 BY MS. WALLET:

6 Q. Okay. So you did tell somebody at work that you  
7 wanted to have sex with Ms. Varner, correct?



8           A.       That was a -- yes. And that was mostly because  
9       it was a disguise, because they had seen that her and I had  
10      so much contact together. We had, you know, we would be seen  
11      in the coffee room. The rumor mill at the office was that we  
12      were having some type of an affair, so would I would try to  
13      diffuse that or deflect that by saying that I was interested  
14      in having, when I was already involved with her. But I would  
15      go around and say that I was interested in having some type  
16      of affair, trying to divert that rumor and act like I hadn't  
17      been having an affair with her.

18           Q.       So you were telling people at work, at least one  
19      person, I'd really like to have sex with Barbara Varner,  
20      when, in fact, you were having sex with Barbara Varner but  
21      you were saying this to disguise that fact?

22           A.       Absolutely. That's accurate.

23           Q.       I see. Who else at work did you tell that you  
24      were interested in having sex with Barbara Varner?

25           A.       I can't recall.

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1           Q.       Do you believe there was no one else except for  
2      the name you mentioned?

3           A.       Do I believe there was no one else? I might have  
4      said something, you know, in passing, giving her compliments  
5      and saying, you know, I'd like to be involved with her.

6 Q. Did you say anything specific about what you  
7 wanted to do to her in a sexual way?

8 A. No.

9 Q. You just said: I want to have sex with her?

10 A. I think I said she was an attractive woman and I  
11 was interested in her.

12 Q. And you didn't tell Mr. Deluce anything about  
13 that interest or your statements --

14 A. Why would I tell him when he didn't ask me the  
15 question?

16 MR. MacMAIN: Gary, listen to her question. She  
17 had asked you before if you told Mr. Deluce. You said no.  
18 And she's asking you again if you told Mr. Deluce.

19 MS. WALLET: No, I'm asking a different question  
20 but you interrupted me, sir.

21 THE WITNESS: I'm sorry.

22 BY MS. WALLET:

23 Q. Did you tell Mr. Deluce that you had, indeed,  
24 indicated to someone at work that you might be interested in  
25 having sex with Ms. Varner?

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1 A. No. That didn't even come up.

2 Q. So he didn't ask you that?

3 A. That's what I said earlier.

4 Q. So you didn't bring anything up?

5 A. I didn't bring a thing up.

6 Q. The only thing you did was answer his specific  
7 questions?

8 A. Right.

9 Q. And he asked you did you sexually harass  
10 Ms. Varner, correct?

11 A. Yes.

12 Q. And did he ask you whether you had had any  
13 contact with Ms. Varner?

14 A. No.

15 Q. Did he ask you if you touched her?

16 A. No.

17 Q. The only question he asked was did you sexually  
18 harass her, and you said no?

19 A. That's right.

20 There was two meetings with Deluce. The first  
21 meeting he only asked a minimal amount of questions. Did  
22 you, you know, discriminate against her with seniority, did  
23 you deny her access to the DUI school, did you -- I mean, I  
24 can think of some of these as we go through but I can't  
25 remember back to that specific date all specific questions.

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1 Did you deny her access to gun training, did you sexually,

2 you know, harass her. No. No. No, no, no. That's all I  
3 answered.

4 Q. And then the second meeting which you  
5 initiated --

6 A. I went down --

7 Q. -- you could tell him whatever you wanted,  
8 correct?

9 A. That's correct.

10 Q. But you didn't tell him then, either?

11 A. No, I didn't. Because I had --

12 Q. I'm sorry?

13 A. I hadn't told my wife, I hadn't told anybody, so,  
14 at the juncture that he was interviewing me. That was April  
15 29th of I think '97.

16 Q. So in April of '97 you hadn't told anyone that  
17 you were having sex with Ms. Varner?

18 A. No one.

19 Q. Did you tell your friend Charlie Mallios?

20 A. No one.

21 Q. Did you ever tell your friend Charlie Mallios?

22 A. No, not till after this thing came out.

23 Q. Okay. Did he know it when he went with you to  
24 the EEOC?

25 A. No.

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1 Q. How much later did you wait to tell Mr. Mallios?

2 A. I don't remember that.

3 Q. Well, do you remember whether, in fact, you told  
4 him?

5 A. Yes, I told him.

6 Q. And do you remember whether you initiated the  
7 conversation in which you said: I need to tell you  
8 something?

9 A. Yes, I did.

10 Q. What did you tell him?

11 A. I told him that I had an affair with her.

12 Q. Did you tell him anything else?

13 A. No.

14 Q. Did you tell him specifically you had sex with  
15 her?

16 A. Sure.

17 Q. Have you seen Ms. Varner naked?

18 A. Yes.

19 Q. Totally naked?

20 A. Yes.

21 Q. On what occasions?

22 A. Different occasions. I mean, she rented a room,  
23 oh, man, at the Fairfield Inn.

24 Q. When was that, sir?

25 A. I'm not --

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1 MR. MacMAIN: If you don't know the date --

2 THE WITNESS: Somewhere in May of '93. Maybe the  
3 23rd or 26th of May, I'm not sure. Something like that.

4 26th of May. She rented a room.

5 BY MS. WALLET:

6 Q. She rented the room?

7 A. Yeah. We had got together, wanted to have more  
8 time together other than activities that were in our car or  
9 in her home or at my house.

10 Q. So prior to the Fairfield Inn, you had had sex  
11 with her in the car, in her house, and --

12 A. In my home.

13 Q. -- at other locations?

14 A. In my home, um-hum, three times. Twice in the  
15 house and once in the garage.

16 Q. When you say house and garage, are you talking  
17 about her home or your home?

18 A. My home. My home, two times in the house, one in  
19 the back room, one in the living room, and one in the garage.

20 Q. Okay.

21 A. And at her home.

22 Q. Let's go back to the Fairfield Inn and then we'll  
23 move to the others.

24 A. Okay.

25 Q. So tell me what happened on the occasion that you

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1 had sex with Ms. Varner at the Fairfield Inn.

2 A. She rented a room with her credit card under her  
3 previous married name, Barb Spidle. She paid for the room  
4 with her credit card. And we went down to, I think it was  
5 room 106. It was on the end of the Fairfield Inn. And I met  
6 her after work around three o'clock. I took off early. I  
7 went to the West Shore Diner, purchased some club sandwiches,  
8 brought a bottle of Amaretto. We went into the room, we had  
9 oral and vaginal sex till about from 3:00 till I think 6:30  
10 that night. I had to teach DUI school at Trinity, so I left.

11 She signed the registration card there at the  
12 Fairfield Inn. And I tried to retain, you know, I tried to  
13 receive that card, and that company is -- it was Sage  
14 Industries and it was associated with the Marriott at the  
15 time. And I went down later to that Fairfield Inn and tried  
16 to get a copy of her receipt and a copy of the registration  
17 form she signed. And I talked --

18 Q. And when did you do that, sir?

19 A. That was a couple years when she -- that was  
20 after she started this sexual harassment complaint.

21 Q. So after 1997?

22 A. Yes. So that might have been four years later.  
23 But I talked to a Daniel Hoy and a Dan Matiatto and then I

24 called an attorney for Sage Industry, Dan Queen out in  
25 Colorado Springs, to try to get the receipt.

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1 Q. Were you successful in getting the receipt?

2 A. I haven't been permitted to access that because  
3 it was charged on her credit card.

4 Q. Does that mean no, you weren't successful?

5 A. No, that doesn't mean that. That means it can  
6 still be accessible if I show cause. But I wasn't named in  
7 any lawsuit at that time because you and Mrs. Varner had  
8 proceeded through the EEOC proceedings which I was prohibited  
9 to try to get discovery from.

10 Q. My question, sir, is: Do you have in your  
11 possession now any document related to a registration card or  
12 any credit card information related to the Fairfield Inn  
13 sexual encounter?

14 A. I answered that. I do not. But that's not to  
15 say that they haven't retained tape it.

16 MR. MacMAIN: She isn't interested -- she just  
17 wants to know if you had anything now.

18 THE WITNESS: No.

19 MR. MacMAIN: The answer was no.

20 BY MS. WALLET:

21 Q. All right. So you spent the afternoon at the



22 Fairfield Inn between approximately three o'clock and six  
23 o'clock?

24 A. Right.

25 Q. Okay. And what were Ms. Varner's sexual

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1 preferences?

2 A. To have intercourse, oral and vaginal  
3 intercourse.

4 Q. What was her preference?

5 A. Both.

6 Q. What was your preference?

7 A. Both.

8 Q. Did you ever have anal intercourse with her?

9 A. On one occasion.

10 Q. When was that, sir?

11 A. I don't know the date. It was after a DUI  
12 school. She would meet me. And previous to that she had  
13 shown me a Redbook article on anal sex as we were delivering  
14 a juvenile up to State College.

15 Q. Do you still have that article?

16 A. No. She showed me the article.

17 Q. What did she say?

18 A. She was interested in having anal sex.

19 Q. How long was it after she showed you the article  
20 that you did it?

21 A. I don't know.

22 Q. Months, weeks?

23 A. I don't know.

24 Q. Days?

25 A. I have no idea. I don't know the date that we

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1 had it. I know the place that we had it. I know it was  
2 after a DUI school. It was along the road to the state  
3 correctional institution, because we would meet at where she  
4 used to work at the Cedar Run, yeah, Cedar Run School. She  
5 used to work there. So when I would meet her after the DUI,  
6 she would say that she would meet me at the Cedar Run Capital  
7 Area Intermediate School.

8 So we met there after a DUI school and engaged in  
9 anal sex along a road, right -- there's a lime quarry right  
10 there, and there's a single tree right along the gates of the  
11 state correctional institution, and that's exactly where it  
12 happened.

13 Q. So you just pulled right in there and had anal  
14 sex?

15 A. I met her earlier in the evening at the parking  
16 lot of Capital -- or Cedar Run, and Cedar Run was right

17 beside there. So we drove to the area, got involved in a  
18 sexual encounter and then had anal sex.

19 Q. Was it during daylight hours?

20 A. Nighttime.

21 Q. Middle of the night?

22 A. It would have probably been around 9:00, 9:30 --  
23 between 9:30 and 10:00.

24 Q. And how long did that last?

25 A. Not long.

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1 Q. A couple minutes?

2 A. 10 minutes.

3 Q. Were you fearful of being discovered doing this  
4 along the side of the road?

5 A. Sure. You know, we would take a remote location  
6 each time. I mean, we took those type of precautions because  
7 I was aware and she was aware that you can be arrested in  
8 your car for having sex. So usually we would drive to  
9 out-of-county destinations so in case we would ever get  
10 interrupted we wouldn't be cited with a disorderly conduct  
11 citation by a police department and that wouldn't go through  
12 the Cumberland County, you know, court authorities.

13 Q. So you thought if you got cited in another county

14 that that wouldn't get back to Cumberland County?

15 A. Sure. Yeah.

16 Q. I don't understand. Why would you do it out of  
17 county?

18 A. We would drive to out-of-county locations and  
19 engage in sex during this time that we were driving around  
20 together and meeting one another.

21 Q. Is New Cumberland in Cumberland County?

22 A. No, that's -- we would go to Goldsboro. We would  
23 park -- she would park her car. She drove a Cabriolet and it  
24 was quite a significant car because it was an aqua blue car  
25 and it had a white roof on. She was always fearful for her

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1 husband to see her car somewhere, so what she would do is  
2 park it at the Giant so she would have an alibi in case he  
3 saw her car and tried to find her.

4 Q. Did she tell you this?

5 A. Sure. She told me that, and she said if he ever  
6 comes in the grocery store I'll tell him I was in the  
7 bathroom.

8 And lot of times she took groceries home to cover  
9 the fact that she had parked in the parking lot and had gone  
10 with me for an hour and a half. So she intentionally bought  
11 groceries to take home to provide an alibi of around these

12 encounters.

13 Q. Did you have anal intercourse with her on more  
14 than occasion?

15 A. One occasion, ma'am.

16 Q. Just one?

17 A. Just one.

18 Q. You didn't like it?

19 A. I did it at her, basically at her request,  
20 because she was somewhat angry with me that I would never  
21 ejaculate in her. So she saw this as a way that I could  
22 ejaculate in her butt as opposed to in her vagina.

23 Q. She told you that?

24 A. Yes, she did.

25 Q. Did she like it?

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1 A. I don't know. I mean, she was happy that I  
2 fulfilled a consummation of ejaculation inside her. That was  
3 what she was wanting and that's what I did.

4 Q. Why didn't you do it again?

5 A. I don't know. We just never got into that again.

6 Q. And this occurred, this anal intercourse, one  
7 occasion, near the correctional facility?

8 A. Right on the road directly beside the state  
9 correctional institution. There's a single tree and then

10 there's a high bank, and it was in a secluded area where  
11 nobody in the yard of the state correctional institution  
12 could see you.

13 We would always park in a location where there  
14 was a long area in front of us and a long area in back of us  
15 and no -- you know, we would find a road, we would find roads  
16 that had a seclusion atmosphere or environment. And then  
17 that way -- most of the time she would wear a dress.

18 She would call me up on the phone at work and she  
19 would say: I have no panties on today, I'm wearing a teddy  
20 today. And usually the days that we were going to and  
21 pre-planned to have sex, she wore a dress, and then she would  
22 crawl over onto my lap and we would have sex in my car. And  
23 it was a -- it's not the most flattering way to have sex but  
24 we were involved with each other in those terms.

25 Q. Your car or her car for the anal intercourse?

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1 A. My car.

2 Q. Did it generally occur in your car rather than  
3 hers?

4 A. Yes, ma'am.

5 Q. Did you have the same car throughout this sexual  
6 relationship?

7 A. I had different cars. I had, like, an old Jeep,

8 I don't know the year. It was a Grand Wagoneer. And I had a  
9 Toyota car that I still drive today because I bought that in  
10 1990. So a lot of it was in my Toyota and some of it was in  
11 my Jeep.

12 Q. What cover did you use with your wife?

13 A. What cover?

14 Q. Yeah.

15 MR. MacMAIN: Do you understand what she means by  
16 cover?

17 THE WITNESS: Yeah. What in regard to, the trip,  
18 like, the Atlantic City or something? The time we went down  
19 to Atlantic City?

20 BY MS. WALLET:

21 Q. Did you tell your wife you were working at these  
22 times?

23 A. I don't think I told my wife anything.

24 Q. I see. You just wouldn't show up after work on  
25 this occasion and --

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1 A. Ma'am, these incidents only lasted about -- our  
2 infatuation with each other would consummate the act of sex  
3 and we were done within an hour most times. It wasn't a real  
4 flattering sexual type of loving relationship. It was more  
5 of an infatuation and excitement drove the moment.

6 Q. I see. Did you love her?

7 A. Did I love who?

8 Q. Ms. Varner.

9 A. No.

10 Q. Did you ever tell her that you loved her?

11 A. No.

12 Q. Did she ever tell you that she loved you?

13 A. No.

14 Q. It was purely for sex?

15 A. Yes, ma'am.

16 Q. And she used the words mature adult relationship?

17 A. Yes.

18 Q. And she said: We're simply having this mature

19 adult relationship and it's not really an infidelity?

20 A. No. She said that she was dissatisfied with her

21 husband's performance at home, she was dissatisfied with him

22 going golfing, she was dissatisfied with him paying a country

23 club tuition, she was dissatisfied with him in his sexual

24 performance and watching X-rated movies.

25 Q. What else did she tell you about her relationship

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1 with her husband?

2 A. That's pretty much the list. She didn't like his

3 smoking. She didn't like his flirting at work. She gave me



4 the name of Blaine Budman, a guy that worked at PPG, and her  
5 husband and Blaine's wife had been engaged in some, I don't  
6 know, type of horseplay. I don't think it was anything  
7 sexual, but -- and she was jealous of that and told me that,  
8 like, she was wanting to retaliate for those type of things,  
9 how he acted.

10 She was basically resentful of his position and  
11 his traveling because, you know, I mean, I guess she thought  
12 she was controlled. She had related on her first husband  
13 that he was controlling. She had come to me, she had come to  
14 Joe, she had said when she was hired first in Probation that  
15 she was an abused woman. Her husband was a truck driver for  
16 UPS, this Mr. Spidle, he was abusive to her, according to  
17 her. And she resented some of the things, you know, he did.

18 Q. Okay. Now, we're back to you didn't have to tell  
19 your wife anything because it wasn't unusual for you to be  
20 not at home?

21 MR. MacMAIN: Objection. That's not what he  
22 said. He said there was an hour period of time.

23 MR. THOMAS: At some point, Deb, I need a break,  
24 but I don't want to interrupt your line of questioning.

25 MS. WALLET: Okay. We'll break within a half

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1 hour. Is that acceptable? Is that all right for you,

2 Ms. Williams?

3 (Discussion held off the record. Recess taken  
4 from 12:03 until 12:11 p.m.)

5 BY MS. WALLET:

6 Q. We were discussing whether you needed to tell  
7 your wife that you were somewhere else in order to avoid  
8 periods of time when you were not at home, and you said no,  
9 you did not need to do that?

10 A. I didn't discuss with my wife, you know, period  
11 of time, because usually it occurred between noon at work and  
12 ended before 5:00, so my wife didn't have any knowledge of  
13 this whatsoever.

14 Q. Did you have occasion to tell your wife that you  
15 were somewhere other than with Ms. Varner?

16 A. The time I went to Atlantic City on that bus trip  
17 with her, I told my wife that I was going down to my sister's  
18 and just taking the day off to go down there.

19 Q. Did you tell your wife on any other occasions  
20 that you were somewhere else when, in fact, you were with  
21 Ms. Varner?

22 A. No.

23 Q. Now, at some time this sexual relationship ended,  
24 correct?

25 A. Yes.

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1 Q. When did it end?

2 A. In State College, somewhere in October during a  
3 DUI conference that she testified to yesterday. I don't know  
4 the exact date.

5 Q. Do you know what year it was?

6 A. Not exactly. Maybe '96. '97. '97. I'm not  
7 sure.

8 Q. And how did the sexual relationship end?

9 A. We were on a -- we were on a commitment trip to  
10 George Junior Republic. I'm not sure of the guy's name; I  
11 think it was Chauncey Shields. We had taken a juvenile out.

12 And after I got promoted to supervisor I told  
13 Mrs. Varner that this couldn't keep -- this couldn't work,  
14 this couldn't keep going on. And I watched her then  
15 associate with people in the office, and there was a lot of  
16 disgruntled employees because we had recently split the  
17 department --

18 MR. MacMAIN: Her question was when did it end?  
19 When was it ended?

20 THE WITNESS: That DUI conference was the last  
21 sexual experience I had with her in State College at the  
22 Nittany Lion Inn. She had called my room five o'clock in the  
23 morning. I was rooming with Hank Thielemann. He can  
24 validate that she made the call. I didn't meet her as she  
25 testified yesterday in the evening. She called me at five

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1 o'clock in the morning. Hank said to me, what's she calling  
2 for. And I said, she wants to go walking. She wants to go,  
3 you know, on a morning walk.

4 I went down to her room. She invited me in, and  
5 we had sex there. That was the end of it.

6 During the DUI conference there was a number of  
7 people, Sam Miller, Denny Drachbar, Hank, I don't know who  
8 else. Barb. Barb had gone up early on Monday. She  
9 testified yesterday that she had a -- didn't -- the reason  
10 she went up early was she had failed the CRN evaluation for  
11 the Pennsylvania Drunk Driving program. Yesterday she  
12 testified that that didn't happen, but it did. She had  
13 failed the test originally for the CRN evaluator test. So  
14 she went up to retake the test the Monday before the  
15 conference started on Tuesday. And she wanted me to go up  
16 early with her, and I refused, and I said, I cannot make  
17 alibis to cover our activities and these guys will be  
18 suspicious.

19 So I would not go up with her Monday, and she was  
20 pissed at that. So she went up, took her test. I met with  
21 her Tuesday morning. I think that was the Tuesday morning  
22 she called. Hank will validate that she called my room or  
23 our room I was sharing with Hank. And I left and went down,  
24 engaged in sex with her, and then went walking with her, to  
25 cover our early-morning activities.

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1           She became angry at me at this conference because  
2   I didn't use this conference as exclusive time with her. She  
3   felt that this was an opportunity for the two of us to have  
4   extra time together that we wouldn't normally have. And I  
5   had gone out with different guys and I said, well, I'm not  
6   going to just go with you out to dinner, I'm going to go with  
7   the rest of the people, and she was angry at that.

8           She did leave the conference early.

9           Q.     And is it your testimony that she left early  
10   because she was angry with you?

11          A.     She left early because she was angry that I  
12   wouldn't spend exclusive time with her up there as opposed to  
13   going out to eat with Denny Drachbar, Sam and the rest of the  
14   people.

15          Q.     How many people were at this conference?

16                 MR. MacMAIN: Total? Or from the county?

17                 MS. WALLET: Total.

18   BY MS. WALLET:

19          Q.     Hundreds?

20          A.     No.

21          Q.     Dozens?

22          A.     Wait a minute. Wait a minute. It's an annual --  
23   I would say hundreds. Maybe a hundred, 130. That's a

24 guesstimate.

25 Q. And your recollection is this conference was what

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1 kind of conference?

2 A. It was a DUI annual conference. The Driving  
3 Under the Influence Association every year has a yearly  
4 conference, and at that conference you attend training  
5 sessions to get and to keep your certification to teach as an  
6 instructor for the DUI schools, and as a CRN evaluator to  
7 administer a Court Reporting Network instrument to anybody  
8 that gets arrested for drunk driving.

9 Q. How many individuals from Cumberland County  
10 attended this conference?

11 A. What I remember is Denny Drachbar, Sam Miller,  
12 Hank Thielemann, Barb, and myself. I can't remember. Or I  
13 mean, there could have been, you know, a couple others. We  
14 have a number of DUI instructors in our office. A lot of  
15 them elect not to go to the annual conference. But that's  
16 the people I know of that were there.

17 Q. You think Barb Varner was the only woman from the  
18 Probation office at that time?

19 A. At that conference --

20 MR. MacMAIN: I'll object. That's not what he  
21 said. He said there may have been other people, he couldn't

22 recall.

23 BY MS. WALLET:

24 Q. Do you remember any other women besides

25 Ms. Varner?

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1 A. No, because she had a room to herself, and if  
2 there would have been another woman, she would have been  
3 sharing that conference room with another woman. And she  
4 went up early, so I don't know if maybe that was the reason,  
5 I mean, that she got her single room. I'm not sure about  
6 that. But that could be her contention.

7 Q. Okay. And you had sex with her on which day of  
8 the conference?

9 A. I think it was a Tuesday.

10 Q. And did she leave immediately thereafter?

11 A. It might have been -- I'm sorry. It might  
12 have -- I'm trying to think. It might have -- because we  
13 went up a day later. If she went up on Monday, we would have  
14 gone up on Tuesday. It might have been Wednesday of that. I  
15 would say Wednesday is my estimation of when she called the  
16 room. But Hank was there and he said, who the hell's that  
17 calling in the middle of the night, or in the middle of the  
18 morning.

19 Q. Did you identify her as Barb Varner?

20 MR. MacMAIN: You mean when the call came in and  
21 Hank said who was that?

22 THE WITNESS: Yes.

23 BY MS. WALLET:

24 Q. So you told Hank that Barb Varner was on the  
25 phone?

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1 A. Yes. He asked me who the hell was that.

2 Q. You didn't just say Barb?

3 A. No.

4 Q. It's your belief that you said Barb Varner?

5 A. I said Barb Varner, because I left and went to  
6 her room, had sex and then went walking with her to disguise  
7 that.

8 Q. But you didn't tell Mr. Thielemann that you had  
9 gone to her room to have sex?

10 A. I told him I was going to her room to meet her.

11 Q. What else did you tell him as a result of that  
12 telephone conversation?

13 A. Nothing. I just left.

14 Q. Okay. So the phone rings at five o'clock in the  
15 morning?

16 A. Right.

17 Q. Do you answer it or does he answer it?



18 A. 5:30. I think I answered it.

19 Q. Okay. Tell me what happened in this  
20 conversation. Hello. Give me the rest of it. Are we going  
21 to get together at this conference, she says?

22 A. Um-hum.

23 Q. Okay. What do you say?

24 A. And I said yes. And she said, well, you want to  
25 come down to the room.

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1 Q. And you said?

2 A. And I said yes. And she said, we can disguise  
3 this that we went walking, tell Hank that we went walking.

4 Q. And you said?

5 A. Okay.

6 Q. Good-bye?

7 A. Hang up.

8 Q. During this conversation did you say anything  
9 like, something, Barbara? Did you use her name?

10 A. Yes. Hank asked me who was on the phone, and I  
11 said Barbara Varner, she wants to go walking.

12 Q. Well, that's not my question. My question is:  
13 During this conversation did you say something followed by  
14 the words Barb or Barbara?

15 MR. MacMAIN: What she wants to know is what

16 words Hank would have heard you say on the phone call.

17 MS. WALLET: Precisely.

18 MR. MacMAIN: Right. Do you understand? Hank's  
19 hearing your end of the conversation. She wants to know  
20 other than what you've said, yes, yes and okay, was there  
21 anything else you said?

22 THE WITNESS: I don't know what Hank would have  
23 heard about my conversation because he was just waking up and  
24 he was saying to me, who the hell's on the phone, and I said  
25 that's Barb Varner and she wants to go walking. So that's

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1 the extent of it.

2 BY MS. WALLET:

3 Q. Okay. Now, is it your testimony, sir, that  
4 Ms. Varner left the conference early because you told her  
5 that you were ending the sexual relationship?

6 A. No. I just didn't pay any attention to her  
7 individually up there. And she wanted to go out and have  
8 dinner and have a time to ourselves, and I said that can't  
9 happen because all these guys are here and they're going to  
10 ask where I went to eat and, you know.

11 Q. This was a three-day conference?

12 A. Usually they're three-day conferences, right.

13 Q. And you went Monday?

14 A. No. She went Monday. I went up Tuesday morning,  
15 and I think Wednesday morning was the call she made to me.

16 Q. And you think the conference was Tuesday,  
17 Wednesday, Thursday?

18 A. Yes.

19 Q. Okay. And you were there and she was there on  
20 Tuesday. She wanted to have dinner with you Tuesday?

21 A. I think we -- I don't recall.

22 Q. Did she want to have dinner with you Wednesday?

23 A. After the -- yeah, that evening, after we had --  
24 I had met her in the morning.

25 Q. And you thought that she wanted to have dinner

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1 with you Thursday?

2 A. Yes. Or Thursday --

3 Q. So those were the three dinners that you thought  
4 she wanted to have with you, and she was mad because you  
5 wouldn't?

6 A. Not three dinners. She didn't specify, you know,  
7 which. She just wanted to have some time together up there  
8 by ourselves. I'm not going to say there was three meals.

9 Q. How did you travel to this conference?

10 A. That's interesting. I don't know, either -- I  
11 think Hank drove.

12 Q. Personal car or county car?

13 A. Personal car, his car.

14 Q. You don't think you drove?

15 A. No.

16 MS. WALLET: We'll take a lunch break.

17 (Recess taken from 12:28 until 1:02 p.m.)

18 BY MS. WALLET:

19 Q. We're back after the break. You understand  
20 you're still under oath, Mr. Graham?

21 A. Yes.

22 Q. I may be a bit distracted here, so if I repeat  
23 something, I ask you to forgive me.

24 We're still at the Penn State conference.

25 A. Okay.

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1 Q. Did you tell her at the Penn State conference  
2 that you were ending this relationship? Or did you identify  
3 this time only as the last time you had sex with her?

4 A. I identified that as the last time I was having  
5 sex with her.

6 Q. So at some later time you broke off the  
7 relationship?

8 A. Yes. We had taken one trip together out, after  
9 that October date, I think it was a December trip out to

10 George Junior Republic.

11 Q. Did you have sex on that trip?

12 A. No.

13 Q. Okay.

14 A. It was a commitment trip.

15 Q. And it was during that trip that you broke off  
16 this relationship?

17 A. Yes.

18 Q. And how did you do that?

19 A. I advised Mrs. Varner that this couldn't keep  
20 working. Since I had been promoted to her boss, we couldn't  
21 keep this affair together, it wasn't going to work.

22 What I experienced at work is when I would  
23 correct her, some of her deficient reports, she would get  
24 angry at me. She had submitted time sheets asking for  
25 basically extra favors out of me that she never asked out of

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1 Joe, and that was when she was attending the master's degree  
2 program at Shippensburg University. She wanted me to approve  
3 training hours to go to a free master's degree program that  
4 she was participating in. And I said, you didn't submit your  
5 request to Joe for payment of those hours, and she took  
6 offense to that. That was one of the things.

7 And basically, quite honestly, I just got

8 consumed with the amount of work I had dumped in my lap as a  
9 supervisor, and our relationship deteriorated. I watched her  
10 align with all the disgruntled employees in our office and I  
11 just lost interest in her, and I think she lost interest in  
12 me.

13 Q. Would you say that this ending was mutual?

14 A. Neither one of us had any other episodes to  
15 resurrect anger that we had towards each other, so I would  
16 say it was mutual.

17 Q. So you were angry at her at the time?

18 A. No.

19 Q. She was angry at you?

20 A. Yes.

21 Q. And what did she do to express her anger?

22 A. She was just angry that I had totally ignored her  
23 and not made an effort to resurrect the kind of relationship  
24 we had previously.

25 Q. My question was: What did she do to express her

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1 anger? Did she tell you that she was angry? Did she do  
2 something?

3 A. She went to other co-workers and complained about  
4 my supervision level. She complained about me as a  
5 supervisor. She complained about assignments being unfair.

6 She complained to Judge Sheely about the seniority list being  
7 unfair. And just a multitude of different complaints. And  
8 there was no attraction at that point where I found that she  
9 aligned with all these angry people in our office.

10 And I'm not saying that everyone was angry every  
11 day, but the workload was phenomenal. When we split those  
12 departments there was 650 referrals, and I'm not going to go  
13 on a tirade. There was 12 people in each department. Just  
14 in less than three years later they have 20 people in the  
15 Adult section and 21 people in the Juvenile section. I don't  
16 know what percentage increase between 12 and 21 people are.  
17 I was replaced with three supervisors. So I'm not telling  
18 you that I didn't -- I was overwhelmed, Ms. Wallet.

19 Joe came to the job, he was angry of what Ken  
20 Bolze had done. He was angry also that --

21 Q. He, Mr. Osenkarski?

22 A. Mr. Osenkarski, and he was angry and the rest of  
23 the staff were angry about what John Ward had done, trying to  
24 take the chief's positions out of a 40-year operation by a  
25 partisan political process and try to be a numbers cruncher

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1 and be in a position to not promote those men to the job that  
2 they were deserving.

3 Q. Now, you're saying that she was angry at you for

4 ending this affair and that's why she did these things? Or  
5 something else?

6 MR. MacMAIN: Objection. I'm not sure that  
7 that's what he said.

8 MS. WALLET: That's why I've asked him.

9 THE WITNESS: I'm sorry.

10 BY MS. WALLET:

11 Q. Are you saying that she was angry at you for  
12 ending this affair and that's why she did those other things?

13 A. Yes. I think it was a way of retaliating against  
14 me for ignoring her.

15 Q. Now, you never made any claim that you were the  
16 victim of some retaliation here, have you?

17 A. I've been -- I was angry at Judge Hoffer and the  
18 action he took against me. Did I make a claim? I don't  
19 think I have a claim as an at-will employee. I don't even  
20 know who I'm really employed by. I don't think you know who  
21 is my true employer, and I don't think the Federal Court  
22 knows who my true employer is. I mean, that distinction I  
23 think gave you trouble when you first applied to, for her  
24 comments towards what forum to hear this case. It's really  
25 unfortunate that, you know, you work in a correctional -- you

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1 work for judges and -- I won't go on to that.



2 Q. Why are you confused about where you're employed  
3 or who employs you?

4 A. Well, when I needed representation, I had an  
5 attorney seek out who could represent me, and I was told by  
6 the -- I got a letter from the AOPC that I was not a -- from  
7 Zygmunt Pines that I was not a court employee.

8 Q. Okay.

9 A. And I think Mr. Thomas and Mr. Dellasega's last  
10 brief indicated that I'm not really a county employee, or  
11 it's their contention that I might not be a county employee.  
12 So that the paradox is between, you know, who belongs to  
13 what.

14 Q. Did you think that you were subject to the county  
15 personnel policies?

16 A. Absolutely.

17 Q. Why did you believe that?

18 A. That was the personnel manual that the county  
19 distributed to all the county personnel.

20 Q. To the best of your knowledge, while you've been  
21 employed in the Probation office, let's limit it to the  
22 Probation office, did you believe that the county personnel  
23 policy manual had a no-harassment policy?

24 A. Yes, it did. I mean, I think it was covered in  
25 general terms under, you know, harassment policy, and it was

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1 a procedure clearly outlined in that policy, in that manual  
2 that allowed people to have relief from that, from those  
3 situations.

4 Q. And do you agree that periodically you were given  
5 a county personnel policy and you were asked to sign  
6 indicating that you had received it and acknowledged that you  
7 were subject to it?

8 A. How far back do you want to go? I have an '84  
9 one. I have maybe an '88 one. I have every one that they  
10 ever produced.

11 MS. WALLET: Let's mark this as Graham  
12 Deposition 1. We'll mark both of them 1 and 2.

13 (Graham Deposition Exhibits 1 and 2 were marked.)

14 BY MS. WALLET:

15 Q. I've handed you what we've had marked as  
16 Deposition Exhibits 1 and 2. Do you recognize your  
17 signatures on those documents?

18 A. Yes, ma'am.

19 Q. Let me ask you about Deposition No. 1. You  
20 signed your name as Stewart G. Graham.

21 A. Correct.

22 Q. Is that your name?

23 A. That's my full name.

24 Q. You told the county in 1981 that you were  
25 changing your name or you wanted to change your name to S.

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1 Gareth Graham. Is that correct?

2 A. That's correct.

3 Q. Why did you do that, sir?

4 A. Because everybody knows me as Gary and nobody  
5 knows me as Stewart.

6 Q. So your formal name is Stewart G. Graham?

7 A. Stewart Gareth Graham, yes.

8 Q. In any event, Deposition No. 1 has something  
9 stricken out. Do you know who did that?

10 A. No.

11 Q. Do you believe that it was stricken before you  
12 were asked to sign this?

13 A. That's 22 years ago. I don't know. I don't --

14 MR. MacMAIN: If you don't know, you don't know.

15 THE WITNESS: I don't know.

16 BY MS. WALLET:

17 Q. Deposition No. 2 references a county sexual  
18 harassment policy dated 3/9/01. I assume your signature  
19 indicates that you received that policy?

20 A. Yes.

21 Q. And you agreed at that time to be bound by it,  
22 correct?

23 A. Yes.

24 Q. Do you know, sir, why a sexual harassment policy  
25 was issued on March the 9th of '01?

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1           A.       No, I would be -- I guess that came from the  
2 Human Resources section.

3           Q.       Do you believe it had anything to do with the  
4 case filed by Ms. Varner?

5           A.       I don't know what it had to do with.

6           Q.       Have you received any sexual harassment training  
7 while you've been employed?

8           A.       Yes.

9           Q.       When was that?

10          A.       In the recent years, '96 or '97. '97. And then  
11 I think every subsequent year thereafter we've had sexual  
12 harassment training.

13          Q.       Were you aware that there was a requirement that  
14 the Probation officers attend training in sexual harassment  
15 as a result of the complaints filed by Ms. Varner?

16          A.       I don't know that to be true, no.

17          Q.       Were you ever told that you were being required  
18 to attend sexual harassment training because of something  
19 Ms. Varner did?

20          A.       I was told that it was a requirement to attend  
21 sexual harassment training because it was an adopted county  
22 policy, and nothing to the -- any further, nothing having to  
23 do with Mrs. Varner.

24 Q. Did you attend sexual harassment training at the  
25 same time as Ms. Varner?

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1 A. On what Joe referred yesterday to the corrective  
2 action plan, and as part of that plan he was, I guess Joe was  
3 charged with setting up an exclusive sexual harassment  
4 training for the Probation staff. And I guess, I think Joe  
5 had arranged that through Mazzitti and Sullivan like he  
6 testified to yesterday, and I attended that.

7 Q. So when you just told me that you didn't think  
8 you had to attend sexual harassment training because of  
9 anything related to the Varner complaints, did you forget  
10 this time?

11 MR. MacMAIN: Objection to the form. He didn't  
12 say that.

13 THE WITNESS: I didn't say that, no.

14 BY MS. WALLET:

15 Q. Let me ask it more clearly. Was there ever a  
16 time when you were required to attend sexual harassment  
17 training because of complaints that Ms. Varner had filed?

18 A. No.

19 Q. So you didn't think your having to attend this  
20 particular sexual harassment training had anything to do with  
21 Ms. Varner's complaints?

22 A. No.

23 Q. What kind of corrective action plan was it?

24 A. I would let Joe speak to that because I didn't  
25 have anything to do with it.

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1 Q. Have you seen this corrective action plan?

2 A. No.

3 Q. How did you know there was a corrective action  
4 plan?

5 A. That's what Joe testified to yesterday.

6 Q. And you didn't know about it before yesterday?

7 A. I think he was charged by Judge Sheely, or I  
8 don't know who it was from. No. I don't. I don't know. I  
9 don't know. I just know that I never saw a plan of  
10 corrective action from Joe's desk. I just heard him talk  
11 about a corrective action plan.

12 Q. Mr. Graham, were you angry that you had to attend  
13 the sexual harassment seminar at which Ms. Varner was also in  
14 attendance?

15 A. No.

16 Q. Did you display any anger at that sexual  
17 harassment training?

18 A. I think she alleged in her Complaint that I read  
19 that I glared and stared at her, I positioned myself to look

20 at her, and I didn't do any of those things.

21 Q. You didn't glare at her?

22 A. No.

23 Q. You didn't seat yourself directly across from  
24 her?

25 A. No. I was in the room before she came in. She I

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1 think sat with Debra Green is what I remember how that came  
2 about.

3 Q. And you did nothing at that harassment training  
4 to indicate some displeasure with Ms. Varner?

5 A. Nothing at all.

6 Q. Mr. Graham, you indicated that you had had sex in  
7 Mrs. Varner's home.

8 A. Correct.

9 Q. Was that in one location or more than one  
10 location?

11 A. Multiple locations.

12 Q. Tell me where you had sex with Mrs. Varner in her  
13 home.

14 A. In her master bedroom.

15 Q. Actually, that's not what I meant.

16 A. Okay. On the bed or?

17 Q. I meant the address.

18 MR. MacMAIN: The address of the home.

19 BY MS. WALLET:

20 Q. What addresses?

21 A. Her York address.

22 Q. And what was the address of that location?

23 A. Is it Etters? I don't know the number. I mean,  
24 it's an Etters address. I don't even remember the street. I  
25 know it's back the end of the, like, a cul-de-sac, or a

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1 one-way road. You can only go in one way and out one way.

2 Q. Okay. How many times did you have sex at that  
3 location?

4 A. Probably eight or nine. Probably less than 10.  
5 I'm not exact -- I don't know exactly if that's the right  
6 amount. Frequently.

7 She had called me one time she was having a gas  
8 fireplace, gas fireplace, what do you call that when they  
9 convert your fireplace in the basement to gas. You know,  
10 they ran a gas line into her fireplace in the basement of the  
11 home. And she was off so that -- she had to be off work that  
12 day so that they could install this gas fireplace insert. I  
13 mean, whether it was just the gas line coming in or the --  
14 and she called me that day and said, do you want to come



15 down, they've come here early, I have the rest of the day  
16 free and Lee's out of town, or he's out on business.

17 So I went, I had sex with her that day in her  
18 basement. She has berber carpet in her basement we covered  
19 up with a red wool, like, an Indian blanket.

20 I can narrate, you know, the description of the  
21 room. We had sex on the floor and on the couch there. Her  
22 husband had a Brooklyn Dodgers, I think it was a baseball  
23 uniform hanging up on the wall. I think she had two  
24 different cameras downstairs. She had pictures of her kids.  
25 She told me to not go near the doors because her neighbors

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1 nextdoor, they were -- he was a well driller and that I  
2 shouldn't go near the window for fear that the neighbors  
3 would see.

4 Q. And this was at the Etters address in York?

5 A. Yes.

6 Q. Eight or nine times you had sex there?

7 A. Yes, ma'am.

8 Q. Okay.

9 A. And you said where else, and I --

10 MR. MacMAIN: She'll ask you. Just listen to her  
11 questions. She said Etters right now.

12 BY MS. WALLET:

13 Q. What other address?

14 A. That I had sex with her?

15 Q. Yes.

16 A. At my home.

17 Q. No. What other address that was the home of  
18 Ms. Varner.

19 A. I had met with her at the Weatherburn Drive  
20 address in outside of New Cumberland, Beacon Hill  
21 development. What I remember, she had a townhouse, it was on  
22 the end she bought.

23 Actually, she sold that townhouse to a former  
24 Cumberland County Commissioner's daughter, Rose Mary Peifer,  
25 I think, Howard's daughter. And she was in a position that

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1 she didn't know how to do her taxes that year, so she asked  
2 my advice. And her, I think her tax, income tax form, her  
3 and her husband's income tax form was done by my accounting,  
4 at Howard accounting in Newville. And I think that's  
5 probably a matter of record, too. I'm not positive.

6 Q. How many times did you have sex in the  
7 Weatherburn address?

8 A. I never had sex in the Weatherburn house, but I'm  
9 familiar with the layout of the house. We would embrace  
10 inside the front door. We would sit on her couch and pet and

11 fondle each other.

12 Q. But no sex there?

13 A. No sex there, ma'am.

14 Q. So the only location where Ms. Varner had her  
15 home where you had sex was the Etters address somewhere  
16 outside of York?

17 A. The Etters address, and --

18 MR. MacMAIN: She was just asking about her  
19 addresses.

20 THE WITNESS: Her address, yes. Okay, I'm sorry.

21 BY MS. WALLET:

22 Q. No other locations that Ms. Varner had as her  
23 home where you had sex?

24 A. No.

25 Q. Now, let's go back to sex at the Etters address.

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1 Is that how you want to refer to it?

2 A. That's fine.

3 Q. Okay. More than five occasions, you're not sure?

4 A. I'd say almost 10 or maybe more. I would have to  
5 look at her husband's travel schedule.

6 MR. MacMAIN: Gary, just listen to her question.  
7 She wanted you to give an estimate. You gave an estimate.

8 THE WITNESS: Okay.

9 BY MS. WALLET:

10 Q. Were these always times when Mr. Varner was  
11 traveling?

12 A. Not always.

13 Q. What dates would you have had sex with her in her  
14 home when Mr. Varner was not away?

15 A. I wouldn't know when he was away or not away,  
16 only on what she would tell me. So I don't have any validity  
17 to validate when he was actually there or when he was away or  
18 he wasn't away. I only could go on what she would tell me,  
19 so I didn't know, Ms. Wallet.

20 Q. Okay. Well, were there times when you had sex in  
21 the Etters address where she told you her husband was not  
22 away?

23 A. Well, that, I think that gas fireplace insert was  
24 one of the times that he wasn't away, but she was there at  
25 the house alone by herself. And since the installation had

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1 occurred I think earlier than she anticipated, it gave her a  
2 free afternoon, you know, because he was on business  
3 somewhere.

4 Q. Did she call you at work?

5 A. Sure.

6 Q. Would she call you on your regular desk phone or

7 on your cell phone?

8 A. I don't know if we had cell phones back then.

9 Q. So the phone would ring on your desk?

10 A. Yes.

11 Q. Was there a receptionist of some sort?

12 A. Well, that -- yes. What would happen is after  
13 she -- it would ring directly, and after three rings it would  
14 go out to the front desk.

15 Q. Okay. So if you picked it up on the first three  
16 rings, you got it and you avoided the receptionist?

17 A. That's correct. And that was kind of a plan that  
18 we had originated between the two of us, to make sure that we  
19 answered.

20 Q. Okay. Now, you wanted to tell me where within  
21 this home you had sex. On the floor, on the couch in the  
22 basement. Where else?

23 A. In her bedroom, master bedroom on her bed.  
24 Directly across from the bedroom there's a room that she used  
25 to call her sewing room. That was, I think that was the

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1 first, that was -- the first time I had sex with her there  
2 that's where we had sex, in the sewing room.

3 Q. Was there a bed in the sewing room?

4 A. I think so. Yeah.

5 Q. Anywhere else?

6 A. Mostly in the basement of the house, because I  
7 would park behind her residence. There was a -- adjacent to  
8 her property there was a rental unit, and I would usually  
9 park my car over near the rental unit, walk in and she would  
10 plan to meet me at the back sliding glass door.

11 Q. Okay.

12 A. And I could walk in the back without having my  
13 car disclosed.

14 Q. Describe the master bedroom in the Etters  
15 residence.

16 A. She has a split-level house. When you go up the  
17 front steps you turn to the right, the first room you come to  
18 is the bathroom. The second room you come to on the  
19 left-hand side is the master bedroom.

20 Q. One bed, two beds?

21 A. I think one bed. Maybe a king size or queen  
22 size, I'm not sure. The bed against the inside wall facing  
23 outside.

24 Q. What color is it?

25 A. I don't know.

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1 Q. Any other furniture in that room?

2           A.       I don't recall. I think there was a TV in that  
3    room.

4           Q.       Do you recall anything else about the master  
5    bedroom?

6           A.       No.

7           Q.       Any other locations in that house where you had  
8    sex with Ms. Varner?

9           A.       No. Mostly in the basement. I think one  
10   occasion in the sewing room, and one occasion in the master  
11   bedroom. That's it.

12          Q.       Now, you had sex in your home, correct?

13          A.       Yes, ma'am.

14          Q.       And what address was your home where you had sex  
15   with Ms. Varner?

16          A.       2037 Ritner Highway, Carlisle, PA.

17          Q.       Who resided in that home with you at the time?

18          A.       My wife and children.

19          Q.       Two children?

20          A.       Two girls, right.

21          Q.       How many occasions did you have sex with  
22   Ms. Varner at the 2037 Ritner Highway address?

23          A.       You asked me that earlier. I said three times:  
24   Once in the garage, once in living room, and once in the,  
25   what I call Florida room.

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1 Q. I didn't ask you, but when you told us about the  
2 sex at Ms. Varner's house, are we talking about three  
3 separate occasions, or sex in three places on one occasion?

4 MR. THOMAS: Objection to form.

5 MR. MacMAIN: Objection. I don't understand --  
6 hold on. I don't understand the question, so.

7 BY MS. WALLET:

8 Q. Okay, I'll be happy to clarify it. You told me  
9 that you had sex eight or nine times in the Etters address.

10 A. I know. Right.

11 Q. Would you have sex one time on each of those  
12 visits? Or are we talking about you had sex eight or nine  
13 times but might have only been in one visit?

14 A. No. It was all separate visits.

15 Q. Separate visits.

16 A. One time in the master bedroom, one time in the  
17 sewing room, and all the rest were downstairs in the  
18 basement.

19 Q. Okay.

20 A. We did it, we engaged in sex on the floor and on  
21 her sectional couch down there.

22 Q. Now, I'm back to sex at 2037 Ritner in Carlisle.

23 A. Okay.

24 Q. Three separate occasions?

25 A. Yes.



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1 Q. During the day or after work?

2 A. During the day, over the lunch hour.

3 Q. Where did you park when you went to your house?

4 A. Usually put the car in the garage. That's how we  
5 had sex in the garage. We just parked, I parked my car in  
6 the garage so my wife wouldn't see that there was a car at  
7 the residence for any reason. I have a separate detached  
8 garage that we pulled into, and had sex in the car.

9 Q. Okay.

10 A. And then the other occasions I think I went in  
11 and let the garage door come down and put my vehicle inside.

12 Q. Did your wife work for the county at this period  
13 of time?

14 A. Yes, ma'am.

15 Q. Did she work full-time?

16 A. Yes.

17 Q. Did she ever go home for lunch?

18 A. Yes.

19 Q. Were you fearful of being discovered having sex  
20 with someone not your wife by your wife?

21 A. Yes, I was.

22 Q. But you did it, anyway?

23 A. Yes, I did.

24 Q. Did you select this location as the place to have  
25 sex?

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1           A.       Yes. I would have made that decision based on  
2 variables of where I thought my wife was at, maybe.

3           Q.       How old were your children at that time?

4           A.       Well, I'll let you figure out the math, but my  
5 daughter, my oldest daughter was born in '84 and my youngest  
6 daughter was born in '88. So it was early '90s. No. It was  
7 not till '92 I had the first sex, so it was after that. '93,  
8 '94, '95. Something like that. Whatever my children's ages  
9 were.

10          Q.       So this sexual relationship spanned at least two  
11 years, if not more?

12          A.       It spanned -- the sexual relationship went from  
13 that February, Valentine's Day back in '92 the whole way  
14 until the Nittany Lion Inn in 1996.

15          Q.       Does Ms. Varner have any distinguishing marks  
16 that are not visible when she's wearing clothes?

17          A.       She has a scar at the base of her back, about her  
18 waistline.

19          Q.       Describe the scar.

20          A.       A one-inch scar, no particular -- might have a  
21 slight curve in it.

22          Q.       Do you know why she got that scar?

23          A.       She testified yesterday that she got that scar as

24 a result of an injury that she had received as a child, I  
25 think. The day before, she testified that she didn't have a

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1 scar anywhere about her body.

2 What she told me was -- I asked her, you know,  
3 did she have -- I asked her if she had back surgery, and I  
4 was under the understanding that she might have had back  
5 surgery because I don't know, I think she told me that. But  
6 evidently she didn't have back surgery, so. And that's why I  
7 remember the mark, because, you know, I questioned, I said,  
8 do you have a disc problem or something. It's at her lower  
9 back on -- near the top of her butt. Not as far down as the  
10 tailbone or anything, it's up further near her waistline or  
11 something.

12 Q. Any other distinguishing marks?

13 A. Well, she told me she had dental surgery to  
14 correct, like, her teeth, she had all her teeth capped, but  
15 she testified that she didn't have her teeth capped. So I  
16 don't know without getting her dental records if what she  
17 told me was the truth or what she's telling during this  
18 deposition is to be the truth. I don't know. I mean, I  
19 guess only her dentist would know if she had her teeth  
20 redone. But she told me that.

21 I think she told me things like she had broken a

22 few toes or something at one time. And I don't know what  
23 that was a result of.

24 Q. Any other distinguishing marks?

25 A. Not that I can recall.

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1 Q. Is there any other intimate detail about  
2 Ms. Varner that only someone who had a sexual relationship  
3 with her would know about her?

4 MR. MacMAIN: Objection as to form. You want to  
5 narrow that? You mean personal information that was  
6 revealed? It's pretty --

7 MS. WALLET: It doesn't matter. Either.

8 MR. MacMAIN: I'll continue to object to the  
9 form, but if you can answer that.

10 THE WITNESS: I mean, she was very orgasmic. I  
11 don't know if that's a specific incident or not.

12 Anything else that I would know? Things that she  
13 testified to yesterday that she wasn't into oral sex with her  
14 first husband at all and had only been introduced to oral sex  
15 with her new husband, Lee.

16 She described -- not -- I mean, this gets off the  
17 point, to her first husband where she said he used to dig at  
18 his crotch until he wore his jeans out. I mean, you can ask  
19 Mr. Spidle about that. She said he reeked of fuel oil all

20 the time I guess from being a truck driver.

21 Things like her daughter had hooked up with a  
22 black gentleman, Cindy had hooked up with a black gentleman  
23 down in North Carolina, and she was concerned about her  
24 ending up with a black man. I don't know if she's a racist  
25 or not, but she was concerned about that.

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1 And how her daughter got introduced to the black  
2 man is because Lee's daughter Sherry was also hooked up with  
3 some black man and having a relationship. And I remember  
4 explicitly, you know, she had sought out my advice on what  
5 she could do to end this relationship between her daughter  
6 Cindy and this Kevin was his name.

7 And actually, I think she even employed her first  
8 husband to take Cindy back to North Carolina for some reason  
9 so that he could talk to her about not ending up with this  
10 guy named Kevin. And he had been up I think at Ms. Varner's  
11 house for a Thanksgiving dinner or something, and she showed  
12 up with this black guy.

13 So, those kind of, that I mean, that's not a  
14 physical thing but those are some of the intimacies hat she  
15 had shared with me. I mean --

16 Q. Is there anything physical that you would know or  
17 only someone who had sex with her would know?

18 MR. MacMAIN: Same objection.

19 Is there anything else that you can recall about  
20 her physically other than what you've testified to?

21 THE WITNESS: That she has olive skin. I mean,  
22 and -- she worked out quite a bit at the gym and she had  
23 solid calves. She was proud of the strength of her legs for  
24 some reason. I mean, she was always bragging about, you  
25 know, going to the Y and when she would run into Kerry Houser

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1 or something like that, and the police chief up there in  
2 Carlisle, and she was always telling me about how he would  
3 try to hit on her. Margeson. Margeson is his name.

4 She also told me, too, at the --

5 MR. MacMAIN: She asked you physical. Is there  
6 anything else physical?

7 THE WITNESS: Not other than her teeth, her toes,  
8 scar on her back.

9 She always -- she said to me about her self  
10 professed, like, double nipple. And that was some kind of a  
11 cartilage. It wasn't an exterior type of thing but an  
12 interior type of thing, you know, it was involved with her  
13 breast, I mean --

14 BY MS. WALLET:

15 Q. Did you observe that?

16 A. There's nothing to observe. I mean, it's what  
17 she told -- basically what she told me. It doesn't protrude  
18 or anything else, it's just something that she claimed was  
19 unique to her.

20 Q. So she doesn't have a double nipple?

21 MR. MacMAIN: If you can answer the question.  
22 The question, I think the original question was --

23 THE WITNESS: No. I mean, she has some type of  
24 cartilage under her nipple that's enlarged is what she told  
25 me.

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1 BY MS. WALLET:

2 Q. Well, did you observe that, sir? Is my question.

3 A. I don't recall that. I don't remember it. I  
4 mean --

5 Q. Did you ever kiss her breast?

6 A. Yes, ma'am.

7 Q. More than once?

8 A. Sure.

9 Q. In a position to observe her nipple?

10 A. Sure.

11 Q. And you didn't observe anything?

12 MR. MacMAIN: Objection. He said it wasn't  
13 observable, it was under the skin so there was nothing to

14 observe.

15 THE WITNESS: Yes.

16 BY MS. WALLET:

17 Q. Could you feel it?

18 A. I think she was -- she had pointed it out to me.  
19 I don't really remember feeling it, no.

20 Q. Is there anything, sir, that wasn't discussed  
21 over the last two days that you know about Barbara Varner of  
22 an intimate nature that you haven't already told us about?

23 A. Well, she said that when her first husband kicked  
24 her out because he always accused her of peddling her ass  
25 around Mechanicsburg, she had gone to live with somebody that

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1 owns Wilcox Forging. Now, I don't know, I think Mr. MacMain  
2 asked the question do you know a Kay Wilcox, but maybe it  
3 wasn't, maybe it was a different name. Some Kay lady that  
4 she had lived with and her husband had taken her in because  
5 she told me she was living on the street and out of her car.  
6 And this former friend of hers, okay, and this, I think they  
7 were involved with Wilcox Forging, a forging company in  
8 Mechanicsburg, that she had -- she was taken in when her  
9 first husband kicked her out. And then she said they really,  
10 they helped her, you know, get through her first episode of  
11 separation.



12 Q. Mr. Graham, were you aware of any gynecological  
13 problems that Ms. Varner had during the period of time that  
14 you were having sex with her?

15 A. I think she had a bladder problem. I think she  
16 would have a, like, a leaky bladder, because on occasion when  
17 we would have sex, you know, she would be embarrassed because  
18 she would, you know, when she would -- she would sometimes,  
19 you know, just I guess pee, you know. I don't know how else  
20 to describe it.

21 Q. Would she bring a change of clothes with her?

22 A. No, not usually.

23 Q. On those occasions where you had sex in the car  
24 during lunch time, did she return to work?

25 A. Not usually, no. Neither one of us did.

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1 Q. So you would have sex at lunch time and then you  
2 would both go home?

3 A. Sometimes.

4 Q. Ever return to work after sex?

5 A. Not often.

6 Q. More than five times?

7 A. I can't give an estimation on that when we  
8 returned home after sex and when we didn't.

9 Q. Any other gynecological problems that you were

10 aware of?

11 A. I think she told -- yeah. I think she told me  
12 she had a, like, a D&C procedure done before. She had a  
13 procedure done to put salt in her varicose veins. That's  
14 something that just came back to memory since you're talking  
15 about that. She had been treated for salt solution in some  
16 of her -- spider veins, she didn't have varicose veins.  
17 Spider veins.

18 She had a D&C. And we had had sex before that  
19 and she wanted me to ejaculate in her because, like, it was  
20 an opportunistic time to consummate the entire act of  
21 ejaculation inside her due to this D&C that she was going to  
22 have performed the next day or something like that. So she  
23 said that would be a way to avert having her get pregnant.

24 Q. She indicated that she wanted to get pregnant to  
25 you?

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1 A. No. I just never trusted her the whole way.  
2 That's why I didn't ejaculate in her.

3 Q. Well, what was the reference to pregnancy?

4 A. The pregnancy would occur if I would ejaculate in  
5 her. That was the reference. And the D&C would be -- I  
6 don't know what's the procedure, but it's a scraping of the  
7 uterine wall, and evidently that would kill any sperm that

8 would happen to be in there or something. I'm not a doctor,  
9 I don't know.

10 Q. So she wanted to have sex with you immediately  
11 after the D&C procedure or immediately before?

12 A. I think before.

13 Q. And she told you why? That was a question. What  
14 reason did she give you as to why?

15 A. That would be a way to consummate the act fully  
16 of ejaculating in her and not worry about getting her  
17 pregnant, because she was worried about getting pregnant and  
18 I was worried about her getting pregnant. I had a vasectomy  
19 after my relationship ended with Ms. Varner but I didn't have  
20 it before.

21 Q. When did you have a vasectomy, sir?

22 A. I knew you were going to ask. I don't know.  
23 Just -- it was after, within the last four years.

24 Q. Well, was it before or after you were transferred  
25 to the prison?

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1 A. It was after I transferred, after I lost my job  
2 in Probation.

3 Q. You think it was within the last four years?

4 A. Yes, ma'am.

5 Q. Any other gynecological information that you have

6 about Ms. Varner?

7 A. No. No.

8 Q. Did anyone witness any of these sexual liaisons?

9 A. No.

10 Q. Did anyone come upon the two of you after you had  
11 had a sexual liaison?

12 A. No.

13 Q. No one ever discovered this?

14 A. Somebody -- I mean, on occasion there were people  
15 that had come up, where we were in the act in the car and  
16 they had come up without us noticing them. But no one had  
17 ever interrupted us or stopped us or seen us. I mean, it  
18 just scared the daylights out of us.

19 Q. And where did that occur? What location?

20 A. Down at the Goldsboro location, near the railroad  
21 tracks.

22 Q. Was that a frequent site of your sexual  
23 encounters?

24 A. Yes, it was, ma'am.

25 Q. How many times did you have sex in or near

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1 Goldsboro?

2 A. Frequently. I mean --

3 Q. More than five?

4           A.       Two or three times a month. It would depend -- I  
5       mean, it would depend. I mean, if it was a -- I mean, I  
6       remember when it rained she would call me, you know, and  
7       usually in the middle of the week we had sex. I mean, there  
8       was a lot of Wednesdays.

9           Q.       What was it about Wednesdays?

10          A.       There wasn't Juvenile court on Thursday, there  
11       wasn't Adult court on Tuesday, things like that. I mean,  
12       there was -- it's kind of, like, a middle-of-week day.

13          Q.       A couple times of month in Goldsboro, a few of  
14       those times somebody would come upon you?

15          A.       No. Only one time a guy got behind us and he  
16       beeped the horn. That was it.

17                   I remember one occasion I was up in Roxbury and I  
18       think another Probation officer named Mike Dunsmore had seen  
19       us in the car, and he came back and confronted me about it.

20          Q.       What had he seen? Just the two of you in the  
21       car?

22          A.       Just the two of us. But he didn't have an  
23       identity of who the other -- who Barb was. And he said, that  
24       was Barb Varner in with you, what were you doing up in  
25       Roxbury.

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1           Q.       And what did you say?

2 A. I said we were supervising.

3 Q. Is that true?

4 MR. MacMAIN: Is what true, that he was  
5 supervising?

6 MS. WALLET: Yes.

7 MR. MacMAIN: Or did Mike Dunmore --

8 MS. WALLET: No. That you were supervising.

9 THE WITNESS: Yes. We had a case and it was an  
10 adult case so it's not protected under confidentiality. It  
11 was a guy named Steve Wilson, and she had his wife or his  
12 girlfriend, some Naylor girl. I'll just say Naylor, Kathy  
13 Naylor. And again, she was, like, slow --

14 MR. MacMAIN: She didn't ask you about the case.  
15 Just --

16 THE WITNESS: Okay, okay. And we had seen that  
17 case and then gone on up to Roxbury over the lunch hour.

18 BY MS. WALLET:

19 Q. And you had sex in the car?

20 A. No. We fondled and kissed each other up there on  
21 the other side of the mountain at Roxbury.

22 Q. When did you tell your wife of this liaison with  
23 Ms. Varner?

24 A. The day after I talked to Judge Sheely.

25 Q. So you went to Judge Sheely, told him that you

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1 had had a sexual relationship with Barb Varner and didn't  
2 tell your wife till the next day?

3 A. No. Hank Thielemann had come down to my office  
4 and said, Gary, this county has been upstairs, David Deluce  
5 has been up there, Horace Johnson was up there, Ward was up  
6 there and Hartnett was up there and they were all basically  
7 gunning to have my job over this sexual harassment  
8 investigation that they had done. Hank said that Judge  
9 Sheely's going to end up -- he's going to transfer you, Gary.  
10 He said, you're going to the prison.

11 Q. How did he know that?

12 A. I don't know. I think -- I don't really know. I  
13 think -- and he said, you better get upstairs, you know. He  
14 said, you know, it's time for you to -- I mean, he just said  
15 something in that regard. I don't know his exact words. But  
16 I said, I'm going to take care of this, and I went upstairs.

17 Q. So the reason you went to Judge Sheely was at the  
18 suggestion of Hank Thielemann?

19 A. No. He just -- he said that you're going to be  
20 losing your job, that's what the rumor is, and you better,  
21 you know, you better go upstairs or you better talk to Judge  
22 Sheely.

23 Q. And you thought that was a good idea?

24 A. Yes.

25 Q. Okay. So, what did you do?

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1 A. I went up to see Judge Sheely. I went --

2 Q. Did you call him, ask for time?

3 A. No. I went up to see him. Asked the secretary,  
4 I guess Sandy, if I could speak with the judge.

5 Q. What happened?

6 A. And I said, you know, Judge Sheely, there's  
7 concerns that you're going to transfer me or put me over in  
8 Adult Probation, and I said, I'm here to tell you that I did  
9 not sexually harass Barbara Varner, I'm here to tell you that  
10 I had an extramarital affair with this woman. And I broke  
11 down. My wife was not there. There was nobody there but me.

12 Q. What did you tell Judge Sheely about this affair  
13 at that time?

14 A. I told him I had an extramarital affair with this  
15 lady and the county was not responsible for her claims of  
16 sexual harassment. It was I was involved with her on a  
17 consensual relationship, infidel relationship.

18 Q. When do you mean the county was not responsible?

19 A. There was no basis to her claims.

20 Q. What did Judge Sheely say?

21 A. He said, have you told your wife? And I said no.  
22 And I said, but I'm going to. So the next day I think I went  
23 in with Dave Foster.

24 MR. MacMAIN: She just asked you about the  
25 conversation with Judge Sheely.



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1 THE WITNESS: Okay. And then I went home and  
2 told my wife.

3 BY MS. WALLET:

4 Q. What did Judge Sheely say to you that ended that  
5 conversation?

6 A. He said, I'm glad you came to me.

7 Q. Do you need a break?

8 A. No. I'll just be all right. He said, I'm glad  
9 you came to me, I'm going to put this matter to rest. He  
10 said, I'm going to call her up, meaning Barb Varner, and I'm  
11 going to put you out on the street for your bad language.

12 Q. Was there anyone else present at that meeting?

13 A. I don't think so. I am a little confused whether  
14 Dave Foster walked in with me. I'm confused whether he was  
15 there or not at the time. I'm not sure.

16 Q. Well, do you remember Mr. Foster being there with  
17 you with Judge Sheely on more than one occasion?

18 A. I think on one occasion, and not the second  
19 occasion, or, you know, on the second occasion, not the first  
20 occasion. But I'm not -- I don't know that to be in stone.  
21 I don't know. I can't remember exactly.

22 Q. So you see Judge Sheely, you tell him you had  
23 this relationship with Ms. Varner. He suggests you tell your

24 wife. Did he suggest that you tell your wife?

25 A. No.

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1 Q. He asked you if you had told your wife?

2 A. Correct.

3 Q. And you said you were going to?

4 A. Correct.

5 Q. Okay. The conversation ends, he's going to put  
6 this to rest. Anything else --

7 A. He said he's going to take care of this.

8 Q. Is there anything else about that meeting that  
9 you remember?

10 A. No. I didn't even know -- I didn't even know he  
11 had called her up, I mean, till later. He just later, you  
12 know, I mean, down the road I guess he made some -- that  
13 document that he performed, you know, I mean, he come up with  
14 that.

15 MR. MacMAIN: Gary, she just asked you about your  
16 conversation.

17 THE WITNESS: That was it.

18 MR. MacMAIN: Hold on. She's not asking what  
19 other people may have said or other people may have done.  
20 Simply your conversation with Judge Sheely the first time.

21 MS. WALLET: Right.

22 THE WITNESS: That was it.

23 BY MS. WALLET:

24 Q. Is there anything else about that conversation,  
25 either what you said or what he said, that you remember now?

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1 A. That's it.

2 Q. All right. So you go home, tell your wife.

3 A. Right.

4 Q. What do you tell your wife?

5 A. That I was involved in a -- she asked me on the  
6 way home, she said, now -- no. The next day I told my wife,  
7 because I went home that night and didn't tell her. And the  
8 next day at noon I told her.

9 Q. Okay. Why did you pick the next day at noon to  
10 tell your wife?

11 A. I think I talked to David Foster and he said,  
12 Gary, he said, that's a long relationship -- well, you know,  
13 don't tell details. I mean, that's all he said, just don't  
14 tell her details, it will hurt her.

15 Q. Did you talk to Foster immediately after you met  
16 with Judge Sheely --

17 A. I think so.

18 Q. -- or the next day?

19 A. I think so, right after I talked to Judge Sheely.

20 And I don't know whether it was in person or on the phone.

21 Q. Do you know what time of day your meeting the  
22 first time with Judge Sheely was?

23 A. Probably middle of the day. I don't know. I  
24 can't remember.

25 Q. Before or after lunch?

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1 A. Before lunch.

2 Q. Did you go back to work?

3 A. I don't know. I can't tell you.

4 Q. You don't remember?

5 A. I don't remember.

6 Q. Did you and your wife customarily drive back and  
7 forth to the courthouse together?

8 A. No. We drove separately.

9 Q. Always?

10 A. 99 percent of the times we drove separately.

11 Q. Why was that?

12 A. Well, because she had different duties than I  
13 did, and I had supervision duties. I would go out and  
14 supervise, so she wouldn't have a car, and if she wanted to  
15 go home for lunch she would not have a vehicle.

16 Q. Okay. So you went home that night, didn't tell  
17 your wife anything.

18 A. Correct.

19 Q. Did she know at that time that there was some  
20 possibility that you would be disciplined as a result of the  
21 complaints made by Ms. Varner?

22 A. She didn't know a thing. I think the next day  
23 since I had told Judge Sheely I was going home to tell her  
24 and I hadn't told her, you know, he ran into her somewhere, I  
25 don't know, you know, being the elevator or in the office,

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1 but he had said, you know, did Gary talk to you, or  
2 something, I think. You'll have to ask him what he said.  
3 But he -- I think he said, did Gary talk to you, and he said,  
4 do you think Gary had an affair.

5 And that next day we got in the car to go home  
6 for lunch, and I didn't even get out of the parking lot when  
7 she looked at me and said, did you have an affair with this  
8 woman, is that why you're in this mess. And I said, yes, I  
9 did. And then we went home. I remember sitting on the patio  
10 and confessing.

11 Q. Okay. What prompted you to be going home for  
12 lunch with your wife on this day?

13 A. I don't know. I had gone home for lunch on  
14 occasion with her. I might have exaggerated my 99 percent,  
15 but most often we drove separately, and even though we drove

16 separately we still went home to lunch together.

17 Q. So is it your testimony that it was actually  
18 Judge Sheely who told your wife?

19 A. No. I told my wife. He didn't say anything to  
20 her. He said, could he have had an affair with this woman to  
21 make her file these complaints. So he was seeing if I told  
22 her the night before. That was his way of expressing  
23 himself.

24 Q. And that was the first notice she had about any  
25 affair, when Judge Sheely asked her about it?

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1 A. He made a generalized comment, as I remember, and  
2 said that do you think Gary could have been having an affair  
3 with this woman or have you considered that, Barb.

4 She got in the car, we went home, and before we  
5 got out of the parking lot, bang, that was it.

6 Q. What did she say to you?

7 MR. MacMAIN: You mean in the car other than what  
8 he's just told you?

9 BY MS. WALLET:

10 Q. Yes, in the car.

11 A. How could you.

12 Q. And what did you say to her?

13 A. I said I was sorry.

14 Q. Did she ask you for details of this relationship?

15 A. I think I told her what Dave Foster said to me,  
16 not to discuss details, it would just hurt her further.

17 Q. Have you at any time since told her the details?

18 A. Yes, she knows most of the details. She doesn't  
19 know the anal sex part of the details.

20 Q. Is that because you told her?

21 A. Yes.

22 Q. Did she get any information about this  
23 relationship from anyone else, to the best of your knowledge?

24 A. No one.

25 Q. Now, did you meet with Mr. Foster at the

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1 workplace the day after you told Judge Sheely of this affair?

2 A. I'm not clear on those details. I mean, I might  
3 have called Dave Foster and said, you know --

4 MR. MacMAIN: Gary, hold on a second. Mr. Foster  
5 is an attorney. Whatever he and you discussed would be  
6 privileged, so she's not asking you what Mr. Foster said or  
7 you said. All she asked is whether or not you met with him.

8 THE WITNESS: I met with him, I'm pretty sure. I  
9 mean, I know I met with him, but I don't know the sequence.

10 BY MS. WALLET:

11 Q. You heard the testimony yesterday or the day

12 before where Ms. Varner said that you met with Mr. Foster and  
13 your wife behind closed doors for a period of time?

14 A. That's totally incorrect. Well, met behind  
15 closed doors or met with Judge Sheely? I mean, there was --  
16 where are you referencing behind closed doors?

17 Q. My question is: Did you meet with Mr. Foster at  
18 the workplace before you went to see Judge Sheely the second  
19 time?

20 A. Yes.

21 Q. You called him and asked to meet with him,  
22 correct?

23 A. As I remember, right.

24 Q. Now, did you intend when you called him that you  
25 were going to take him with you to see Judge Sheely?

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1 MR. THOMAS: Him? I'm sorry? Take him? Meaning  
2 Mr. Foster?

3 MS. WALLET: Correct.

4 MR. THOMAS: Okay.

5 THE WITNESS: I think he volunteered to be -- to  
6 go up with me. I don't think I took him by design, I think  
7 he just said, do you want me to go up with you.

8 BY MS. WALLET:

9 Q. Okay. And who was present at this second meeting



10 with Judge Sheely?

11 A. Just myself and Dave Foster and Judge Sheely.

12 Q. Your wife was not there?

13 A. That's incorrect. She was not there.

14 Q. And what was the purpose of this second meeting  
15 with Judge Sheely?

16 A. I'm trying to make sure I have the sequence  
17 correct, Ms. Wallet. I'm not -- I want to amend the record  
18 to reflect I'm not sure what day David Foster went up with  
19 me. Either it was the first day or the second day. He might  
20 have gone in with me to Judge Sheely the first day when I  
21 confessed the affair, instead of the second day. But I don't  
22 remember my wife being in on that meeting at all on the first  
23 occasion I saw Judge Sheely.

24 Q. Okay. Were you with your wife at any meeting  
25 with Judge Sheely?

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1 A. No, not that I remember. I went in with Dave  
2 Foster. I don't think I went in with Barb the next day. I  
3 don't think my wife Barb was included in that meeting. She  
4 could have been, I'm not sure. That was a traumatic time. I  
5 can't recall that.

6 Q. My question was: What was the purpose of this  
7 second meeting with Judge Sheely?

8           A.       I don't know. I mean, I don't know what -- I  
9       don't even -- maybe there wasn't even a second meeting, maybe  
10      I'm running them together. I just don't -- I don't know.  
11      I'm confused on that topic, Ms. Wallet, I don't know.  
12      Because I thought I originally told my wife, and then I  
13      checked with her last night and she said, no, you didn't tell  
14      me the first day that I think you and David went in there,  
15      you told me the next day, because Judge Sheely come up to me  
16      and said do you think he could have been having an affair.  
17      And then she said, I questioned you in the car on the ride  
18      home. And she said, I remember her saying it was Lainey's  
19      birthday. I mean, what a time to remember. That's her  
20      cousin.

21               As far as the second day, maybe I'm running the  
22      two days together. Maybe there was only one contact with  
23      Judge Sheely. I was thinking I went in myself and then Dave  
24      Foster later, but -- and I'm not trying to confuse the  
25      record, I'm just -- poor Emily. I don't -- maybe there was

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1      only one meeting with Judge Sheely and then -- I don't know  
2      if I had the second meeting. I just do not recall. I'm  
3      confused.

4           Q.       Well, do you remember Judge Sheely telling you  
5      anything other than: I'm going to put you on the street for

6 your bad language?

7 A. No, he didn't say a thing. He didn't say what  
8 type of disposition he was going to make. He said, I'm going  
9 to take care of this matter, and that was it.

10 Q. Did he ask you anything about the specific  
11 allegations by Ms. Varner of sexual harassment?

12 A. Not after I told him I had a consensual affair  
13 with her, no, not that I recall.

14 Q. So after you said you had a consensual affair,  
15 your recollection is Judge Sheely said: I'm going to take  
16 care of this matter?

17 A. Yes, ma'am. And he didn't say anything further.

18 Q. How did you learn that you did get three days on  
19 the street?

20 A. He put it in a document and sent it down to, I  
21 guess Joe.

22 Q. And the original days that you were going to be  
23 suspended were changed, correct?

24 A. Yes.

25 Q. Why were they changed?

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1 A. I don't know. I don't know. I don't have any  
2 idea.

3 Q. You don't remember why there was a change in the

4 days of your suspension?

5 MR. MacMAIN: He just said he doesn't.

6 THE WITNESS: I don't. I don't remember why.

7 BY MS. WALLET:

8 Q. Had you previously received any disciplinary  
9 action while you worked for the county?

10 A. No.

11 Q. How about for the courts?

12 A. No.

13 Q. So this three-day suspension was the first  
14 disciplinary action you had ever suffered?

15 A. Yes, ma'am.

16 Q. Did you believe that you had been disciplined in  
17 any other way as a result of the allegations of Ms. Varner  
18 other than the three-day suspension?

19 A. Did I? I'm sorry, you'll have to repeat that.

20 MS. WALLET: Let's take a short break. Let's  
21 talk about what our plan is for today.

22 (Recess taken from 2:21 until 2:24 p.m.)

23 BY MS. WALLET:

24 Q. After you met with Judge Sheely and he said he  
25 would take care of it, did you think that this matter was

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1 over?

2 A. No.

3 Q. What did you think would happen after that?

4 A. I didn't know what was going to happen.

5 Q. When was the first time after you had the meeting  
6 with Judge Sheely that someone spoke to you about  
7 Ms. Varner's complaints?

8 A. The first time that somebody spoke to me about  
9 Ms. Varner's complaint after talking with Judge Sheely, I  
10 don't know. I don't know if anybody spoke to me about it.

11 Q. Do you know whether someone spoke to you before  
12 you learned that you had been named as a defendant in the  
13 federal court suit?

14 A. I think the formal notice that I received was  
15 from your office asking me to acknowledge your federal  
16 lawsuit, and I didn't ever send you an acknowledgment of your  
17 notice because I didn't want to --

18 Q. Okay. So you think between the time you met with  
19 Judge Sheely and when you received the federal Complaint, no  
20 one spoke to you about Ms. Varner's allegations?

21 A. No.

22 Q. No, you don't think so? Or no, no one did?

23 A. No, no one spoke to me about anything further.

24 Q. Were you angry at being sent to the prison?

25 A. No. Furious.

1 Q. And what, if anything, did you do to express your  
2 anger and furiousness?

3 A. There was nothing I could do.

4 Q. Did you complain to anyone in the supervisory  
5 chain?

6 A. No. It was a decision by Judge Hoffer.

7 Q. Did you express displeasure to Judge Hoffer at  
8 his action?

9 A. The day that he -- it was a Monday. It was  
10 more -- he called me into his office said that I'm  
11 transferring you to the Adult Probation office. I was there  
12 less than three minutes. I implored him to let me speak and  
13 to the events that have happened over the last couple years,  
14 and I asked him not to put me in Adult Probation and put me  
15 down in -- he said, you're going down, you're going to be  
16 transferred to the Adult Probation office, go clean out your  
17 desk, take the rest of the day off and report to John Roller  
18 the next day.

19 I said, would you please let me explain the  
20 circumstances around the last year and a half, and he said  
21 no. And he said -- I said, can you give me a reason why I'm  
22 being transferred, and he said, I've lost confidence in you.

23 Prior to that week --

24 MR. MacMAIN: Gary, just answer her question. If  
25 she wants more, she'll ask you for more.

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1 BY MS. WALLET:

2 Q. Do you remember anything else about what you said  
3 or what Judge Hoffer said at that time?

4 A. I just remember -- I didn't make any comments but  
5 I remember feeling that he treated me like a dog, where I had  
6 to sit in front of him and I couldn't speak and I couldn't  
7 give an explanation as to my frustration in defending these  
8 accusations.

9 Q. Did he tell you at that time that your transfer  
10 to Adult Probation had anything to do with the allegations  
11 that were made by Ms. Varner?

12 A. No.

13 Q. Did you believe that they were related to the  
14 allegations that Ms. Varner made?

15 A. Did I believe? Sure, I believed that.

16 Q. Why did you believe that?

17 A. I didn't know what other reason he would transfer  
18 me.

19 Q. Did you tell anybody that day that you had been  
20 transferred?

21 A. I think so.

22 Q. Who did you tell?

23 A. I walked in the Probation office. Denny Drachbar  
24 caught me at the first counter and was giving me a raft of  
25 baloney over being upstairs talking to Hoffer about, you

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1 know, why are we having staff meetings now again. And I just  
2 said, well, you won't have to worry about that, you won't  
3 have to be bugging me about it because I've been sent to the  
4 prison or, yeah, sent to the prison.

5 Q. Did you tell anybody else?

6 A. I think I told Joe.

7 Q. What did you tell Joe?

8 A. I think Tom Boyer was in his office. I said,  
9 I've just been terminated and I've been terminated from my  
10 position and I'm to report to John Roller tomorrow morning.

11 Q. Did you use the F word?

12 A. I don't think so.

13 Q. Anybody else at that little gathering use the F  
14 word?

15 MR. MacMAIN: Objection as to form, that little  
16 gathering.

17 BY MS. WALLET:

18 Q. Just my reference to Joe and Tom Boyer.

19 A. Joe and Boyer being in Joe's office.

20 Q. Yes.

21 A. No, I didn't use the F word.

22 Q. My question was: Did anyone else use the F word?

23 A. No. No, they didn't. They were as shocked as I



24 was.

25 Q. Were you angry at that time?

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1 A. I was numb at that time.

2 Q. Did you tell anybody at that time or shortly  
3 thereafter that there would be punishment for those who sided  
4 with Ms. Varner?

5 A. No. That's not true.

6 Q. You never said that?

7 A. I never said that.

8 Q. Never said something like: I'll get even?

9 A. I said, this isn't right. I said, I worked 22  
10 years advancing good will in this office, to be dismissed in  
11 three minutes with not even being able to utter a word, yes,  
12 I was angry.

13 I had just gone through my mother's death on  
14 January 4th, and less than 40 days later he was taking my job  
15 away. So I was pretty emotionally numb to this.

16 Q. Have you threatened anyone who may be a witness  
17 in this case?

18 A. Not at all.

19 Q. Did you call any other individual within the  
20 Probation Department disloyal to you?

21 A. No.

22 Q. Have you talked to any potential witnesses in  
23 this case about this case?

24 A. No one will talk to me, ma'am.

25 Q. You haven't talked to Hank Thielemann?

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1 A. No.

2 Q. You haven't talked to Hank Thielemann about the  
3 Penn State conference?

4 A. No.

5 Q. Have you talked to Tom Boyer?

6 A. No.

7 Q. Have you had Mr. Osenkarski talk to these people  
8 on your behalf?

9 A. No.

10 Q. Have you asked anybody that you think might be a  
11 witness in this case what they are going to say about the  
12 circumstances of the case?

13 A. No.

14 Q. You haven't talked to anybody at the Probation  
15 office about this case?

16 A. I said I was falsely accused.

17 Q. Who did you tell that to?

18 A. Probably a number of people. John Roller. Lyle  
19 Herr. Mike Varner. Heime Rivera. Charles McKenrick.

20 Q. Is there a difference in the weapons policy  
21 between Juvenile Probation and Adult Probation?

22 A. Yes, there is.

23 Q. What is the difference?

24 A. I think Adult officers are allowed to carry a  
25 firearm if they complete firearm training that the state

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1 provides.

2 Q. Do you have any interest in doing that?

3 A. Not at all.

4 Q. Did anyone tell you that you would not be  
5 permitted to carry a firearm as part of your duties and  
6 responsibilities in Adult Probation?

7 A. No, not at all. In fact, Mike Varner had given  
8 me an application saying that if I had any interest, you  
9 know, I could sign up for being equipped with a weapon and  
10 training.

11 Q. Let's talk about the Atlantic City trip.

12 A. Okay.

13 Q. Was this trip, in your opinion, planned with  
14 Ms. Varner in advance of the day of the trip?

15 A. Yes, it was.

16 Q. Tell me how it was planned.

17           A.       We had talked about having, like, a day that we  
18       could escape when her husband was away. She testified that  
19       he wasn't -- he was home when she went on that trip. He  
20       wasn't, he was away, is what she told me, so -- and I suspect  
21       that you can get his travel record to find that he was away  
22       on this date.

23                   What do you want know about it? I bought the  
24       tickets at the Personal Tees booth in the MJ Mall.

25           Q.       Did you buy one or two tickets?

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1           A.       Two tickets.

2           Q.       Charge them or pay cash?

3           A.       Cash.

4           Q.       Did you buy a ticket specifically for Barbara  
5       Varner?

6           A.       Yes, I did.

7           Q.       What was the plan?

8           A.       The plan was to go down, my -- under the guise of  
9       me going to see my sister, and her going because her husband  
10       was out of town for that day.

11          Q.       Why did you get on at separate stops?

12          A.       Because there was a Carlisle stop, a Camp Hill  
13       stop, and a Harrisburg stop. We both drove down. I drove to  
14       Camp Hill so that my car would not be, you know, in Carlisle.

15 And I -- we both got on at the Bon-Ton beside the Capital  
16 City Mall, the parking lot behind Burger King. I don't know  
17 what the address is there, but that was the bus pickup. And  
18 we both --

19 Q. So your testimony is you got on at the same stop?

20 A. Absolutely.

21 Q. And you got on at the Bon-Ton stop?

22 A. Yes, I did. We both parked our cars there.

23 Q. And when you got onto the bus, did you  
24 immediately sit together?

25 A. Yes, we did.

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1 Q. Where did you sit on the bus?

2 A. Back of the bus.

3 Q. Very back?

4 A. I think we moved back there. But we sat in near  
5 the back, within three seats of the back of the bus. Yes.

6 Q. Anybody on the bus that you knew?

7 A. Not at the time we got on it, but when the bus  
8 stopped in Harrisburg, Barb jumped up and said, oh, my God,  
9 there's Carol Shearer, or Carol Snoke. And it was a  
10 secretary that she had worked with at Children and Youth.  
11 And her husband-to-be, Wayne Shearer.

12 Q. Okay. Did she move her seat?

13 A. She jumped up and we separated seats and we  
14 pretended that we were just on the bus separately.

15 Q. And then eventually did you sit together?

16 A. Yeah. We sat together going down. I think the  
17 bus was full, so I think -- and then we sat together going  
18 down and we sat together coming home.

19 Q. Did you know anybody else on the bus?

20 A. No, ma'am.

21 MR. MacMAIN: You mean other than the people he's  
22 mentioned?

23 MS. WALLET: The people that were identified.  
24 Anyone else meant somebody in addition.

25 BY MS. WALLET:

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1 Q. Okay. What did you do when you got to Atlantic  
2 City?

3 A. Went to -- we didn't get off at different stops.  
4 I think she testified yesterday we got off at different  
5 stops. I don't even remember the bus having a different  
6 stop.

7 She is correct with the, I think we got \$15 in  
8 coin to spend. And Ms. Varner's testimony is correct that I  
9 called my sister.

10 I then purchased a room with cash funds at the  
11 Bally's resort, and it's now the Hilton. They've changed  
12 names from when I registered for the room. We went to --

13 Q. Did you register in your own name?

14 A. You know, it's interesting. I don't know. I  
15 might have used Stewart. I might have used Stewart Graham,  
16 or just a single initial. I paid cash, though.

17 And we went to a room on the fifth floor  
18 overlooking the air conditioners. We engaged in oral and  
19 vaginal sex there for the afternoon. We got a shower  
20 together, a bath together. We went down and ate at the  
21 buffet restaurant. I don't think we set foot on the beach  
22 that whole day. So that directly conflicts with what she  
23 testified to.

24 Q. Okay. Did you do anything else that day that you  
25 remember?

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1 A. No. We just went, spent the day in the room. I  
2 remember talking about, I don't know how this happened, but  
3 we -- she was talking about her dad, I think, and my dad, and  
4 we got to talking about, like, war stories, or World War II  
5 or something. I mean, we got to talking about something like  
6 that, of all things, when we were intimate together and  
7 spending time, we were talking about that.

8 MR. THOMAS: Someone's ringing.

9 (Discussion held off the record.)

10 BY MS. WALLET:

11 Q. I don't remember whether we were in mid question  
12 or mid answer.

13 MR. MacMAIN: You had answered.

14 MR. THOMAS: We were mid answer.

15 THE WITNESS: So we had spent the afternoon -- we  
16 got there at 11 o'clock and we left there around five  
17 o'clock. We had sex in the room after I registered. And  
18 then we went down to the buffet and ate.

19 BY MS. WALLET:

20 Q. Okay. Why didn't you just drive to Atlantic  
21 City?

22 A. Probably because I would have to give my wife an  
23 explanation why I was going there.

24 Q. What explanation did you give your wife for going  
25 on the bus?

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1 A. I said I was just going to go down for the day.

2 Q. When you paid cash for this room, do you remember  
3 how much it cost?

4 A. 50-some dollars. It was a -- yes, it was a  
5 midweek type of deal, I think.



6 Q. How did you explain these cash expenditures to  
7 your wife?

8 A. I didn't.

9 Q. Did you do anything else in Atlantic City  
10 together?

11 MR. MacMAIN: Other than what you've already told  
12 her.

13 THE WITNESS: Nothing.

14 BY MS. WALLET:

15 Q. How many times have you had dinner with  
16 Ms. Varner at the Deer Lodge?

17 A. On a couple occasions, maybe two.

18 Q. Alone?

19 A. Three. Yes.

20 Q. Just the two of you?

21 A. Yes.

22 Q. And do you remember any work-related reason for  
23 why you may have stopped at the Deer Lodge?

24 A. Well, we wanted to get a good place to eat at the  
25 end of an institutional trip, so we would come back the whole

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1 way to Carlisle to eat at a good place.

2 Q. And who suggested the Deer Lodge?

3 A. Well, she had been there with her husband, she

4 had, you know, on a weekend. And then I think they had just  
5 opened a new deck. And she and her husband were up, and we,  
6 me and my wife were out there. My wife and I were out there  
7 one night. And we made introductions.

8 Q. Do you agree that you went to the Deer Lodge on a  
9 day that you had been on a business trip?

10 A. I think so, yeah.

11 Q. Both times?

12 A. Probably.

13 Q. Did you consider these dates?

14 A. Oh, no. No. That was -- it was a county policy  
15 that allowed if you were outside the area after the dinner  
16 hour you were allowed to put reimbursement in for a meal,  
17 which generally meant around five o'clock or something, if  
18 you were outside of town and weren't home after a business  
19 trip.

20 Q. So if you came home from a business trip and you  
21 went right to your car and went home, you didn't get a meal  
22 allowance, correct?

23 A. They gave you a meal allowance if -- yes, because  
24 you could take a meal home with you. If you chose at that,  
25 at the end of that trip not to go somewhere, you could do

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1 what Ms. Varner did and Ms. Green did, went to a restaurant,

2 buy a meal, take it home and end your day earlier than you  
3 would just eat, you know, the last hour on the county  
4 overtime.

5 Q. Could you get paid for the hour of your meal if  
6 you took a meal at the end of your trip?

7 A. Yes, you do.

8 Q. That was the whole reason to do it, right? The  
9 county paid the meal and you got an extra hour of wage?

10 A. You'd have to ask Joe or Ken Bolze on that, on  
11 reimbursement. I don't know if they took away from your  
12 overtime or just paid your regular pay at that time. I  
13 don't -- they might have only paid you regular pay for that  
14 hour instead of overtime pay. I'm not sure.

15 Q. Well, was there an advantage to eating and  
16 getting a receipt for food at the end of a business trip at  
17 the end of the business day?

18 A. Sure.

19 Q. What was the advantage?

20 A. The advantage is to get reimbursed for the meal  
21 you ate.

22 Q. Anything else?

23 A. And probably add that to the amount of total time  
24 that you spent delivering the juvenile.

25 Q. Okay. How many times did you meet Barbara Varner

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1 for what you considered to be a date at the Silver Springs  
2 flea market?

3 A. Multiple Sunday mornings. And as far as number,  
4 probably during the whole summer season, you know, seasons,  
5 you know, she said --

6 Q. Every Sunday?

7 A. A good bit of Sundays. Not every Sunday.  
8 Every -- three Sundays out of a month, maybe. Sometimes two  
9 Sundays out of a month.

10 Q. Okay. Always on Sunday?

11 A. Yes. Sunday morning.

12 Q. And what did you tell your wife about where you  
13 went on Sunday morning?

14 A. I still go to the flea market on Sunday mornings,  
15 and I still do that. So I just told her I was going to the  
16 flea market.

17 Q. Did she ever ask to come with you?

18 A. She -- no. She doesn't care to do that.

19 Q. Did you go to the flea market before you began to  
20 meet Ms. Varner?

21 A. Yes.

22 Q. So this was a rather regular routine for you; you  
23 liked to go to the Silver Springs flea market and you've done  
24 that for many years?

25 A. I've done it for a number of years. Probably

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1     what, I was -- most of my motivation at that juncture was to  
2     go and meet with her, because that provided a facility and a  
3     time frame that we could meet.

4           Q.     Did you have sex during or after any of those  
5     flea market meetings?

6           A.     Yes, we did.

7           Q.     Where would you have sex?

8           A.     Up on the top of, I think it was on McClure's  
9     Gap, but it was out in back of on 944 on back of Visaggio's  
10    there's a road that goes up over the top of the mountain. I  
11    can't think of what gap it's called. There's a number of  
12    different gaps there. We'd drive my vehicle up to the top of  
13    the mountain and have sex in my car.

14          Q.     So she would come in her vehicle, you would come  
15    in your vehicle.

16          A.     Right.

17          Q.     Then what happened?

18          A.     Then we would leave, go have sex at the top of  
19    the mountain.

20          Q.     And then return to the flea market?

21          A.     Yes, ma'am.

22          Q.     How long did all of this take?

23          A.     Well, we would usually be there around 7:00 and  
24    we were usually home by 10:30, 11 o'clock.

25                   She told me her husband, she was repulsed at her

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1 husband golfing every Sunday morning, and that was I guess  
2 her way of retaliating.

3 Q. Did she ever meet any of her children --

4 A. Sure. I met her children there.

5 Q. How many times did you meet her children?

6 A. A couple times.

7 Q. More than five?

8 A. I advocated for her son to get hired at Schaffner  
9 Youth Center.

10 Q. That's not responsive to my question.

11 A. Okay. More than five.

12 Q. Did you meet more than five?

13 A. Probably less than five.

14 Q. And were they occasions when you met both her son

15 and her daughter on the same day? Or you met different  
16 children on different days?

17 A. Different children on different days. I think  
18 her daughter was in college. She was only there, you know,  
19 just if she was visiting on a weekend. She would mostly go  
20 alone.

21 Q. Were there times when Ms. Varner would have the  
22 grandchild?

23           A.       I don't think ever, that I remember. I think the  
24 grandchild was picked up after our activities had ceased and  
25 she picked him up on the way home.

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1           Q.       When you say after your activities had ceased,  
2 meaning after 11 o'clock or 11:30?

3           A.       Yes, ma'am.

4           Q.       Not after in months of time?

5           A.       No. After we had concluded having our sex at the  
6 top of the mountain.

7           Q.       Anybody see you at the Silver Springs flea market  
8 with her?

9           A.       Yes. Becky Over. I don't know what her married  
10 name is. She provided that yesterday.

11                   Her son saw us there. Jeanie, her son's wife,  
12 saw us there.

13                   Her son I think purchased some baseball gloves  
14 for me. I was hunting some extra baseball gloves and he  
15 ended up, I think he got baseball gloves for me.

16           Q.       Did Ms. Over observe any activity between the two  
17 of you that would suggest a romantic relationship?

18           A.       No.

19           Q.       Anybody that you know see you at the Silver  
20 Springs flea market engaging in any conduct which would be

21 considered, which someone might consider to be a romantic  
22 conduct?

23 A. No.

24 MR. MacMAIN: Objection as to what someone might  
25 believe that they saw.

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1 BY MS. WALLET:

2 Q. Something like holding hands or kissing?

3 A. No, none of that.

4 Q. Is it your testimony, sir, you were very discreet  
5 about not allowing anyone to see the two of you together?

6 A. I don't think we were -- no, we didn't make any  
7 extra steps during those flea market days to, I mean, during  
8 the flea market activities to be real discreet. We didn't  
9 walk around totally together, because once we saw each other  
10 and once we hooked up, then we took off and went up to the  
11 top of the mountain.

12 Q. Are you aware of any witnesses, sir, on any of  
13 these occasions when you were with Ms. Varner who observed  
14 conduct that would be suggestive of a romantic relationship?

15 MR. MacMAIN: Same objection as before. Be  
16 specific. I'm not sure what someone's --

17 BY MS. WALLET:

18 Q. Such as kissing, holding hands, arm in arm?



19 A. I think we were pretty discreet in most of our --  
20 in concealing our infidelity. That's how I can answer that.  
21 I don't...

22 Q. Is it your testimony that you had sex with  
23 Ms. Varner at your father's store?

24 A. No. I was -- I'll let you ask.

25 Q. Ms. Varner was asked about whether or not she was

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1 in your father's store. Do you know why she was asked that  
2 question?

3 MR. MacMAIN: Objection --

4 THE WITNESS: Yes.

5 MR. MacMAIN: -- but you can ask him whether or  
6 not she was ever at his father's store.

7 THE WITNESS: She was at my father's store. I  
8 had been repairing an apartment above my dad's store and  
9 during the early interludes that we would meet, she came up  
10 there. That was early, early in the relationship, between  
11 '90 and '92, it was early, because my dad was still living  
12 there. He died in '91, so. And she had come up to the  
13 apartment while I was working on it, in the evening, and we  
14 kissed and fondled one another upstairs in the apartment.

15 BY MS. WALLET:

16 Q. And this apartment is directly upstairs from the

17 store?

18 A. Well, my dad had a store -- we owned the entire  
19 corner building. And there was a store and then what was to  
20 be a video shop beside it, and the apartment was directly  
21 above it. So, it was four units there, two storerooms  
22 downstairs and two apartments upstairs.

23 Q. Could you access the apartment from the store?

24 A. No.

25 Q. Were you concerned that your father would see you

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1 there with another woman?

2 A. Somebody did see us there. The boy that ran our  
3 store was name of Kenny Newell, N-E-W-E-L-L. And Ms. Varner  
4 and I were up there an extensive period of time, being it  
5 possibly an hour and a half, and she was there under the  
6 guise that she was looking for an apartment maybe for her  
7 daughter. And she was coming -- and her position was that if  
8 somebody asked, you know. And when we went down the back  
9 steps, not the front steps but the back steps, Kenny Newell  
10 was just locking the stock room and he looked up and saw us  
11 coming down.

12 Q. What did you tell Mr. Newell?

13 A. I didn't say a thing to him. I later said to him  
14 that that was a woman looking for an apartment for her

15 daughter.

16 Q. Okay. Again, I ask you, you weren't concerned  
17 about your father seeing you with another woman there?

18 A. My father wasn't there at the time.

19 Q. Is that the only occasion when Ms. Varner was in  
20 the apartment above your father's store?

21 A. Yes, ma'am.

22 MR. MacMAIN: Debra, I would note it's just about  
23 three o'clock. I don't know if you're done this area or if  
24 this is a good break point.

25 MS. WALLET: It's fine. We'll break so long as

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1 you'll produce Mr. Graham on another occasion and allow me to  
2 finish.

3 MR. MacMAIN: Sure. Absolutely.

4 (Whereupon, the deposition was continued sine die  
5 at 3:01 p.m.)

6 \* \* \* \* \*

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1 COMMONWEALTH OF PENNSYLVANIA )  
2 )  
3 COUNTY OF DAUPHIN )  
4 I, Emily R. Clark, a Court Reporter-Notary Public  
5 authorized to administer oaths and take depositions in the  
6 trial of causes, and having an office in Harrisburg,  
7 Pennsylvania, do hereby certify that the foregoing is the  
8 testimony of S. GARETH GRAHAM taken by Plaintiff at the  
9 Administrative Offices of Pennsylvania Courts, 5035 Ritter  
10 Road, Mechanicsburg, Pennsylvania.

11 I further certify that before the taking of said  
12 deposition the witness was duly sworn; that the questions and  
13 answers were taken down in stenotype by the said  
14 Reporter-Notary, approved and agreed to, and afterwards  
15 reduced to computer printout under the direction of said  
16 Reporter.

17 I further certify that the proceedings and  
18 evidence are contained fully and accurately in the notes  
19 taken by me on the within deposition, and that this copy is a  
20 correct transcript of the same.

21 In testimony whereof, I have hereunto subscribed  
22 my hand this 21st day of February, 2003.

23

24

25

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Notary Public

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